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A Bill for imposing a tax on income derived from sources other than agriculture.

WHEREAS it is expedient to impose a tax on income derived from sources other than agriculture; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- [Trades and Professions Tax Bill, 1879, s. 1.] 1. (1) This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf; and

(2) It shall come into force at once.

- [Ben. Act II, 1880, s. 2.] 2. The enactments specified in the first schedule to this Act are repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.

3. In this Act, unless there is something repugnant in the subject or context,—

- [Act VIII, 1872, s. 2.] (1) "company" means an association carrying on business in British India, whose stock or funds is or are divided into shares and transferable, whether the company is incorporated or not, and whether its principal place of business is situate in British India or not:

- [Act XIII, 1885, s. 3.] (2) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund:

- [Trades and Professions Tax Bill, 1879, s. 12.] (3) "pay" includes allowances, fees, commissions, perquisites or profits received, in lieu of or in addition to a fixed salary, in respect of an office or employment of profit under the Government or

under a company or under a local authority or under any other public body or association not being a company; but it does not include travelling, tentage, horse or sumptuary allowance, or any other allowance granted to meet specific expenditure:

(4) "income" means income and profits accruing and arising in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any pay, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf:

(5) "year of assessment" means a year beginning on the first day of April:

(6) "Magistrate" means a Presidency Magistrate or a Magistrate of the first or second class:

(7) "person" includes a firm and a Hindu undivided family:

(8) "defaulter" includes a company or firm making default under this Act:

(9) "Collector" means the chief officer in charge of the revenue-administration of a district, and in a presidency-town any officer whom the Local Government, by notification in the official Gazette, may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency-town in which its principal place of business in British India is situate; and, in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the district or presidency-town in which the person has his residence:

(10) "principal officer," used with reference to a company or a local authority or any other public body or association not being a company, means—

(a) the secretary, treasurer, manager or agent of the company, authority, body or association; or

(b) any person connected with the company, authority, body or association upon whom the Collector has caused a notice to be served of his intention of treating him as the principal officer thereof:

(11) "Part" means a Part of the second schedule to this Act: and

(12) "prescribed" means prescribed by the Governor General in Council by notification in the *Gazette of India*, or by the Governor General in Council or a Local Government by rules made under this Act.

CHAPTER II.

LIABILITY TO TAX.

4. Subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April, 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule.

Exceptions.

5. (1) Nothing in section 4 shall render liable to the tax—

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assess-

ed to land-revenue or subject to a local rate assessed and collected by officials of the Government, as such; or

(b) any income derived from—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce; or

(c) any income derived from moveable or immoveable property solely employed for public charitable or religious purposes; or

(d) any income which a person enjoys as a member of a firm or of a Hindu undivided family when the firm or the family is liable to the tax; or

(e) any interest on stock-notes; or

(f) the pay of any officer, warrant-officer, non-commissioned officer or private of Her Majesty's Forces or of Her Majesty's Indian Forces who is not in an employment which, according to the ordinary practice, is held indifferently by military persons and civilians, and whose pay does not exceed five hundred rupees per mensem; or

(g) any person whose income from all sources is less than five hundred rupees per annum.

(2) Nothing in section 4 shall render chargeable, under Part I of the second schedule to this Act, the pay of any person in the service of the Government whose pay does not amount to one hundred rupees per mensem.

6. The Governor General in Council may, by notification in the *Gazette of India*, exempt from liability to the tax the whole or any part of the income of any class or tribe, or of any persons residing in any specified area, and may, by a like notification, revoke the exemption.

CHAPTER III.

ASSESSMENT AND COLLECTION.

A.—Salaries and Pensions.

7. In the case of a person receiving any pay, annuity, pension or gratuity from the Government, any sum payable to him by the Government in respect of the pay, annuity, pension or gratuity shall be reduced by the amount of the tax to which he is liable under Part I in respect thereof.

8. (1) In the case of a person receiving any pay, annuity, pension or gratuity from a company or from a local authority or from any other public body or association not being a company, the tax to

which he is liable under Part I shall, at the time of the payment to him of any of the pay, annuity, pension or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

(2) If that officer does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(3) If, when any payment is made, the tax is from any cause not deducted, it may, and on the requisition of the Collector shall, be deducted when any pay, annuity, pension or gratuity is subsequently paid to the person liable to the tax.

(4) The power to deduct under this section shall be without prejudice to any other mode of recovery.

9. The principal officer of every company, and of every local authority, and principal officer of company or association.

or of every other public body or association not being a company, shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, in the prescribed form, a return in writing showing—

(a) the name of every person receiving at the date of the return any pay, annuity or pension from the company, authority, body or association, as the case may be; and

(b) the amount of the pay, annuity or pension so received by each such person.

B.—Profits of Companies.

10. The principal officer in British India of every company shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, a statement in writing signed by him showing—

(a) in the case of a shipping company having ships engaged in trade between British India and any other country, the nett profits made by each of those ships during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then during the year ending on the said thirty-first day of March; and,

(b) in the case of any other company, the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then during the year ending on the said thirty-first day of March.

[Act VIII,
1872, s. 12.]

11. (1) If the Collector has reason to believe that a statement delivered under section 10 is incorrect or incomplete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced, for the inspection of the Collector such of the accounts of the company as refer to the year to which the statement relates and as are in his possession or power.

(2) On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II, and the time when the amount shall be paid, and, subject to the provisions in this Act contained, that amount shall be payable accordingly.

C.—Interest on Securities.

[Act VIII,
1872, s. 15.]

12. (1) The tax payable under Part III in respect of the interest on any of the securities mentioned in that Part shall, at the time when and place where any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

[New.]

(2) If that person does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

D.—Other Sources of Income.

Ordinary Mode of Assessment and Collection.

[Act VIII,
1872, s. 25.]

13. The Collector shall, from time to time, determine what persons are chargeable under Part IV, and the amount at which every person so chargeable shall be assessed.

[Act VIII,
1872, s. 26.]

14. (1) The assessment shall be made upon the income accruing to the person during the year ending on the day of the year next before the year of assessment on which his accounts have been usually made up, or on the thirty-first day of March last preceding.

(2) In the case of a person for the first time becoming chargeable under Part IV within the year of assessment, or within the year next before that year, the assessment shall be made according to an average of his income for such period as the Collector, under the circumstances, directs.

[Act VIII,
1872, s. 25.]

(3) In assessing under Part IV, in respect of income assessable under that Part, a person in the service of the Government, whose pay, by reason of its being less than one hundred rupees per mensem, is not chargeable under Part I, the Collector

shall treat both the pay and the other income as chargeable under Part IV.

15. (1) The Collector shall at the prescribed time list of incomes under in each year prepare a list of the persons chargeable under Part IV whose annual income does not, in his opinion, amount to two thousand rupees.

(2) The list shall be in the prescribed language or languages, and shall state in respect of every such person the following particulars, namely:—

(a) his name and the source or sources of the income in respect of which he is chargeable;

(b) the year or portion of the year for which the tax is to be paid;

(c) the place or places, district or districts, where the income accrues;

(d) the amount to be paid; and

(e) the place where, and the person to whom, the amount is to be paid.

(3) The list shall be filed in the office of the Collector before the prescribed date, with a notification prefixed thereto requiring every person mentioned in the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(4) The list so filed shall be open to inspection at all reasonable times without any payment.

(5) The list, or such part or parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as the Local Government may consider to be best adapted for giving information to all persons concerned.

(6) The list to be prepared each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

16. In the case of a person chargeable under Part IV whose annual income is, in the Collector's opinion, two thousand rupees or upwards, the Collector

shall cause a notice to be served on him stating the particulars (a) to (e), both inclusive, mentioned in section 15, and requiring him to pay, within sixty days from a date specified in the notice, the amount stated therein as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

17. (1) Notwithstanding anything contained in section 15 or section 16, the Local Government may make rules authorising or directing a Collector in specified cases, or classes of cases, to include in a list under section 15 any person who is liable to be served with a notice under section 16 instead of serving him with such a notice, and to serve a notice under section 16 on any person liable to be included in a list under section 15 instead of including him in such a list.

(2) Rules made under this section shall be published in the official Gazette.

Act VIII, 1872, s. 28.] 18. Every amount specified as payable in a list or notice prepared or served under section 15 Time and place of pay- or section 16 shall be paid ment. within the time, and at the place, and to the person, mentioned in the list or notice.

Trustees, Agents, Managers and Incapacitated Persons.

Act VIII, 1872, s. 17.] 19. A person being the trustee, guardian, curator Trustees, guardians or committee of any infant, and committees of inca- married woman subject to the pacitated persons to be law of England, lunatic or charged. idiot, and having the control of the property of the infant, married woman, lunatic or idiot, whether the infant, married woman, lunatic or idiot resides in British India or not, shall, if the infant, married woman, lunatic or idiot is chargeable under Part IV, be chargeable under that Part in like manner and to the same amount as the infant would be chargeable if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

Act VIII, 1872, s. 17.] 20. Any person not resident in British India, Non-residents to be whether a subject of Her charged in names of Majesty or not, being in their agents. receipt, through an agent, of any income chargeable under Part IV, shall be chargeable under that Part in the name of the agent in the like manner and to the like amount as he would be chargeable if he were resident in British India and in direct receipt of that income.

Act VIII, 1872, s. 19.] 21. Receivers or managers appointed by any Receivers, managers, Courts of Wards, Ad- Courts of Wards, Ad- ministrators General and ministrators General and Official Trustees. Official Trustees. Trustees shall be chargeable under Part IV in respect of all income officially in their possession or under their control which is liable to assessment under that Part.

Act VIII, 1872, s. 20.] 22. When a trustee, guardian, curator, com- Power to retain duties mittee or agent is, as such, charged on trustees, &c. assessed under Part IV,

or when a receiver or manager appointed as afore- said, a Court of Wards, Administrator General, or Official Trustee is assessed under that Part in respect of income officially received,

the person or Court so assessed may, from time to time, out of the money coming to his or its possession as trustee, guardian, curator, committee or agent, or as receiver, manager, Court of Wards, Administrator General or Official Trustee, retain so much as is sufficient to pay the amount of the assessment.

Occupying Owners.

Act VIII, 1872, s. 21.] 23. Owners of houses or lands occupying the Provision for tax on same shall be chargeable in occupying owners. respect of the annual value thereof at nine-tenths of the full rent at which the houses or lands are worth to be let for the year.

CHAPTER IV.

REVISION OF ASSESSMENT.

24. (1) Any person objecting to the amount at [Act VIII, 1872, s. 30.] which he is assessed, or deny- ing his liability to be assessed, under Part IV may apply by petition to the Collector to have the assessment reduced or cancelled.

(2) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 15, or in the notice served under section 16, as the case may be. But the Collector may receive a petition after the expiration of that period if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(3) The petition shall, as nearly as circum- stances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints.

25. The Collector shall fix a day and place [Ben. Act II, 1880, s. 19.] for the hearing of the peti- tion, and on the day and at the place so fixed, or on the day and at the place, if any, to which he has adjourned the hearing, shall hear the petition and pass such order thereon as he thinks fit.

26. Subject to the control of the Local Govern- [Ben. Act II, 1880, s. 21.] ment, the Commissioner of the Division may, in his discretion, on the petition of any person deeming himself aggrieved by an order under section 14, sub-section (2), or section 25, call for the record of the case, and pass such order thereon as he thinks fit.

27. The Collector or Commissioner may summon [Act VIII, 1872, s. 34, and Ben. Act II, 1880, s. 22.] any person whom he thinks able to give evidence for the purpose of enabling him to determine how the petitioner or the company which he represents should be assessed; and may examine on oath the person so summoned and the petitioner, and may require either of them to produce any documents in his possession or power relating to the sources of the income to the assessment of which the petition relates:

Provided that the Collector or Commissioner shall not call for any evidence except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

CHAPTER V.

RECOVERY OF ARREARS OF TAX.

28. The tax chargeable under this Act shall be [Act VIII, 1872, s. 35.] payable at the time appointed in that behalf in or under this Act, or, if a time is not so appointed, then on the first day of June in each year.

[Act VIII,
1872, s. 36.]

29. (1) In any case of default under this Act the Collector may either recover a sum not exceeding double the amount of the tax as if it were an arrear of land-revenue, or pass an order that a sum not exceeding double that amount shall be recovered from the defaulter:

Provided that, where a person has presented a petition under section 24, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(2) An order passed under sub-section (1) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant; and the order may be enforced in manner provided by the Code of Civil Procedure for the enforcement of decrees for money; and the procedure under the said Code in respect of the following matters—

- (a) sales in execution of decrees,
- (b) arrest in execution of decrees for money,
- (c) execution of decrees by imprisonment,
- (d) claims to attached property, and
- (e) execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code upon the Court shall be exercised and discharged by the Collector by whom the order has been made or to whom a copy thereof has been sent for execution according to the provisions of the said Code, sections 223 and 224.

[Act II, 1878,
s. 19.]

(3) No sum payable under this Act shall be recoverable by any process whatsoever after the expiration of three months from the last day of the year in respect of which it is payable.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

Receipts.

[Act VIII,
1872, ss. 28
and 29.]

30. When any money is paid under this Act to the Collector or is recovered thereunder by him, he shall give a receipt for the same, specifying—

- (a) the date of the payment or recovery of the money;
- (b) the amount paid or recovered;
- (c) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable;
- (d) the year or part of the year for which the tax was payable;
- (e) the place or places, district or districts, where the income accrues; and
- (f) such other particulars, if any, as may be prescribed.

Under-assessments and Over-assessments.

31. (1) If the Collector has reason to believe that, in assessing any person under this Act, any source of income not specified in the receipt given to him under section 30 has been overlooked, which source, if it had then been known to exist, would have increased the assessment, the Collector may cause a notice to be served on the person, stating the amount to be paid in respect of that source.

(2) The provisions contained in sections 16 and 18 and 24 to 27 (both inclusive) shall apply to the notice and regulate the procedure thereunder.

32. (1) If, during or within two months from the end of the year for which an assessment under Part IV has been made, the person assessed proves to the satisfaction of the Collector that his income during that year will be or has been less than the sum on which the assessment under that Part was made, the Collector may cause the assessment made for the year to be amended as the case requires, and refund such sum, if any, as has been overpaid.

(2) If a company or person assessed under Part II or Part IV ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person or its or his representative in interest may apply to the Collector within three months after the end of the year, and the Collector, on proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

Penalties.

33. (1) If a person fails—
Failure to make payments or deliver returns or statements.

(a) to deduct and pay any tax as required by section 8, sub-section (1), or section 12, sub-section (1), or

(b) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 9 or section 10, or

(c) to produce, or cause to be produced, on or before the date mentioned in a notice under section 11, such accounts as are referred to in the notice,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(2) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

34. If a person makes a statement in a petition presented under section 24 which is false, and which

he either knows or believes to be false or does not believe to be true, he shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

35. No person shall be proceeded against for an offence under section 33 or section 34 except at the instance of the Collector.

36. In sections 193 and 228 of the Indian Penal Code, the words "judicial proceeding" shall be taken to include any proceeding under this Act.

Power to make Rules.

37. (1) The Governor General in Council may make rules consistent with this Act for the ascertainment of income liable to assessment and, generally, for carrying out the purposes of this Act, and may delegate to a Local Government the power to make such rules so far as regards the territories subject to that Government.

(2) Rules made under this section shall be published in the official Gazette.

Miscellaneous.

38. No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act.

39. All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised and performed by such other officer or person as the Local Government appoints in this behalf.

40. Every person shall be legally bound to furnish in the prescribed manner and at the prescribed time such information as any officer or person exercising all or any of the powers of a Collector under this Act may require from him for the purposes of this Act.

41. (1) A notice under this Act may be served on the person therein named either by post or by the delivery or tender to him of a copy of the notice.

(2) If a notice is served by post, it shall be deemed to have been served at the time when it would be delivered in the ordinary course of post, and in proving the service it shall be sufficient to prove that the notice was properly addressed and put into the post.

(3) If the notice is to be served otherwise than by post, the service shall, whenever it may be practicable, be on the person named in the notice or, in the case of a firm or a Hindu undivided family, on some member thereof.

(4) But when the person or member cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the

serving-officer shall fix the copy of the notice on the outer door of the house in which the person or firm therein named ordinarily dwells or carries on business.

42. (1) When a company or firm has several places of business in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be the principal place of business.

(2) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

(3) When a person has several places of residence in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(4) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(5) The powers given by this section may be delegated to and exercised by such officers as the Governor General in Council or the Local Government, as the case may be, appoints in this behalf.

43. Where a person is in respect of any period liable to the tax under this Act, he shall not in respect of that period be assessed to the pândharî tax levied in the Central Provinces under Act XIV of 1867, or to the capitation-tax, or the land-rate in lieu thereof, levied in British Burma under the Burma Land and Revenue Act, 1876. **II of 1876.**

44. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

45. All powers conferred by or conferrable under this Act on the Governor General in Council or on a Local Government may be exercised from time to time as occasion requires.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1878	The Northern India License Act, 1878.	So much as has not been repealed.
Act No. VI of 1880	The Indian License Acts Amendment Act, 1880.	The whole.

ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

THE SECOND SCHEDULE—*contd.*

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878	The Madras License Act, 1878.	So much as has not been repealed.
Act No. III of 1880	An Act to amend Madras Act. III of 1878 as amended by Act VI of 1880.	The whole.

ACT OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878	The Bombay License Act, 1878.	So much as has not been repealed.

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1880	The Bengal License Act, 1880.	The whole.

THE SECOND SCHEDULE.
SOURCES OF INCOME AND RATES OF TAX.
(See section 4.)

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

PART I.

SALARIES AND PENSIONS.

1. Any pay, annuity, pension or gratuity paid in British India by the Government, or by a company, or by a local authority, or by any other public body or association not being a company, to any person residing in British India or serving on board a ship plying to or from British Indian ports, whether on account of himself or another person.

2. Any pay, annuity, pension or gratuity paid by the Government, or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf, to a British subject within the dominions of a Prince or State in India in alliance with Her Majesty.

(a) If the income amounts to Rs. 2,000 per annum, or Rs. 166-10-8 per mensem, or upwards—five pies in the rupee.

(b) If the income is less than Rs. 2,000 per annum, or Rs. 166-10-8 per mensem—four pies in the rupee.

Interest becoming due on or after the first day of April, 1886, and payable in British India, on—

(a) promissory notes, debentures, stock or other securities of the Government of India, not being stock-notes, or

(b) bonds or debentures charged by the Imperial Parliament on the revenues of India, or

(c) stock or debentures of, or shares in, railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council, or

(d) debentures or other securities for money issued by or on behalf of a local authority.

Five pies in the rupee on such interest, unless the owner of the security produces a certificate signed by the Collector that his annual income from all sources is less than Rs. 500, in which case no deduction shall be made from the interest, or unless he produces a like certificate that his income from all sources is less than Rs. 2,000, in which case the rate shall be four pies in the rupee.

PART IV.

OTHER SOURCES OF INCOME.

Any source of income not included in Part I, Part II or Part III of this schedule.

(a) If the annual income is assessed at—

not less than Rs. 500 but at less than Rs. 750	the tax shall be Rs. 750
" " " 750	" " " 1,000
" " " 1,000	" " " 1,250
" " " 1,250	" " " 1,500
" " " 1,500	" " " 1,750
" " " 1,750	" " " 2,000

(b) If the annual income is assessed at Rs. 2,000 or upwards,—five pies in the rupee on the income.

THE THIRD SCHEDULE.

FORM OF PETITION.

(See section 24.)

To THE COLLECTOR OF

The day of 188 .

The petition of A. B. of

SHEWETH as follows—

1.—Under Act No. of 1886, your petitioner has been assessed in the sum of rupees for the year commencing the first day of April 188 .

2.—Your petitioner's income and profits accruing and arising from [here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise] for the year ending the day of last were rupees as will appear from the documents of which a list* is presented herewith.

3.—Such income and profits actually accrued and arose during a period of months and days [here state the exact number of months and days in which the income and profits accrued and arose].

4.—During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly [or that he may be declared not to be chargeable under the said Act].

(Signed) A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

* This list, if the petitioner so wishes, may be presented in a sealed envelope.

STATEMENT OF OBJECTS AND REASONS.

It having been found necessary to have recourse to legislation for the purpose of increasing the public revenues, it has been decided to extend the existing License Tax to offices, employments and professions, and, generally, to make liable to assessment all incomes derived from sources other than agriculture.

The existing License Tax Acts are repealed and a single Act for all India is substituted.

The rate of the tax has been slightly raised, and the area of its incidence has been, as above stated, extended; but the principles of the License Tax are closely followed in the case of annual incomes below Rs. 2,000, and the procedure and machinery for assessment and collection are maintained in the case of all incomes so far as is consistent with the altered conditions of the tax.

A. COLVIN.

The 4th January, 1886.

S. HARVEY JAMES,

Offg Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 23, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill for imposing a tax on income derived from sources other than agriculture was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 22nd January 1886 :—

WE, the undersigned, Members of the Select Committee to which the Bill for imposing

From the Officiating Secretary to the Government of Bengal, No. 31, dated the 7th January, 1886.

Telegram from the Financial Secretary to the Government of Bombay, dated the 11th January, 1886.

Telegram from the Chief Commissioner of Assam, dated the 11th January, 1886.

Telegram from the Resident, Hyderabad, dated 9th January, 1886.

Telegram from the Secretary to the Government of the Punjab, dated the 9th January, 1886.

Telegram from the Chief Secretary to the Government of Madras, dated the 11th January, 1886.

Note by A. Smith, Esq., Commissioner, Presidency Division, Bengal.

From the Secretary to the Government of the North-Western Provinces and Oudh, No. 5—XIII-101-2, dated the 9th January, 1886.

Telegram from the Secretary to the Chief Commissioner, Central Provinces, dated the 11th January, 1886.

Letter from James L. Mackay, Esq., to the Hon'ble R. Steel, No. 17, dated the 13th January, 1886.

Letter from H. B. H. Turner, Esq., to the Hon'ble R. Steel, dated the 13th January, 1886.

Memorandum by Dosabhai Framji, Esq., C.S.I., Presidency Magistrate, Bombay.

Letter from the Secretary, Indian Jute Manufacturers' Association, dated the 13th January, 1886.

Telegram from the Chief Commissioner, Ajmer-Merwara, dated the 15th January, 1886.

From the Officiating Secretary, Board of Revenue, Lower Provinces, No. 34 B., dated the 16th January, 1886.

Letter from the Secretary to the Bengal Chamber of Commerce, dated the 16th January, 1886.

Memorial from the Managers, Agents and Secretaries of the leading Life Assurance Companies carrying on business in India, dated the 16th January, 1886.

Telegram from the Bombay Chamber of Commerce, dated 19th January, 1886.

incomes will be assessable, and that the Government should at once be in a position to frame the necessary rules for assessment.

ing a tax on income derived from sources other than agriculture was referred, have considered the Bill and the papers noted on the margin, and have now the honour to submit this our Report.

2. We have provided in section 1 that the Act shall come into force on the first day of April next. During the time which elapses between the passing of the Bill and that date, the Government will be able to prepare and issue its rules, and Collectors to make such arrangements for the assessment of the tax as they can make without calling in aid the provisions of the Act. It is important that Collectors should know as soon as possible what

3. In section 5 we have, with advertence to section 24 (section 23 of the Bill as introduced), inserted a clause (clause (c)) excepting from liability to the tax the whole of the annual value of buildings which landholders and agriculturists own and occupy on, or in the immediate neighbourhood of, the land they hold and cultivate, and which are necessary to them in the exercise of their vocation as landholders and agriculturists. Thus, while a landholder will be exempt from the tax in respect of the annual value of the homestead (if any) appurtenant to his land, he will be assessable in respect of any other house he may own and occupy.

4. We have inserted in the same section a further clause (clause (f)), based on the English law, excepting from liability to the tax any portion, not exceeding one-sixth, of his income which a person pays either to the Government or to a company in respect of life-insurance or deferred annuity.

5. Clause (d) of section 5 (clause (c) of that section in the Bill as introduced) is based on a similar clause in Act VIII of 1872. The exemption appears to us to be sufficient to cover educational endowments, and does not, as has been suggested, open a door to the evasion of the Act by colourable gifts to idols or any like device.

6. We have omitted sub-section (2) of the same section in the Bill as introduced. There appears to us not to be sufficient ground for making, between official salaries and other incomes, the distinction which was proposed in that sub-section.

7. By the new sub-section (2) appended to section 5, we have made it clear that a salaried manager of land is not exempt from the tax by reason only of the income of his employer being exempt therefrom.

8. We have ascertained that companies and some other private employers are much opposed to that provision of the Bill as introduced which imposed on them the duty of deducting the tax from the salaries of their employés. To the argument that there was such a provision in force in the years 1869-72, they reply that the provision was then a fruitful cause of misunderstanding and disagreement between them and their subordinates. Under these circumstances it appears to us that companies ought not to be compelled to collect the tax. We have therefore modified section 8 of the Bill, and empowered the Collector, by a new section (section 9), to enter into an arrangement with any private employer, on terms to be mutually agreed on, for the collection by the employer of the tax payable by his employés.

9. Section 10 of the Bill as introduced followed the Acts of 1869 and 1872 in making special provision for the taxation of shipping companies. It has been stated, and we have satisfied ourselves, that the provision was unworkable and, in practice, inoperative. It has therefore been omitted from section 11, and the second schedule, of the Bill as amended by us: and we have added to section 5 a special exemption (clause (d)) in favour of shipping companies incorporated or registered out of British India and having their principal places of business out of India and their ships ordinarily engaged in sea-going traffic out of Indian waters.

10. To section 18 (section 17 of the Bill as introduced) we have added clauses empowering the Local Government to authorise the Collector in any specified town or place to publish general notices inviting tax-payers to make returns of their income, and in any presidency-town to serve special notices on individual tax-payers inviting them to make such returns.

11. In section 24 (section 23 of the Bill as introduced) we have provided for houses occupied by their owners being assessed at five-sixths, instead of nine-tenths, of their annual value. We have thus reverted to the principle of section 132 of Act XXXII of 1860.

12. We have so modified section 27 (section 26 of the Bill as introduced) as to require the Commissioner to call for the record in the case of a petition for the revision of any assessment of two hundred and fifty rupees or upwards.

13. In section 30 (section 29 of the Bill as introduced) we have provided for the continuance of the summary process of recovery described in section 24 of the Bengal License Act, 1880.

14. In sub-section (5) of the same section we have provided that no proceedings for the recovery of any sum payable under the Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable. The section as amended by us is more restrictive on the revenue-authorities than the corresponding section of the Bengal License Act, 1880, and less so than the corresponding section of the Northern India License Act, 1878.

15. In section 31 provision has been made, as in Act XXXII of 1860, for composition of the tax.

16. Seeing that provision is made in Chapter IV for revision of assessment, we think that section 32, sub-section (1), of the Bill as introduced should be omitted, and that sec-

tion 31 of that Bill may also be omitted, as being likely, by suggesting the disturbance of settled assessments, to create irritation with which the additional revenue raised under the section would be incommensurate.

17. In section 38 of the Bill as amended by us (section 37 of the Bill as introduced) we have provided for rules being made for securing secrecy in regard to information furnished in documents relating to incomes of assesseees.

18. We have deemed it desirable to specify more particularly than in section 40 of the Bill as introduced the information which may be required by a Collector for the purposes of the Act. We have, therefore, for that section substituted sections 41 to 45 of the Bill as amended.

19. We have modified section 46 (section 41 of the Bill as introduced) by providing that the delivery of a letter duly posted shall only be presumed, and we have required the letter to be registered.

20. From the first column of Part III of the second schedule to the Bill as introduced we have omitted the clause relating to stock of, or shares in, guaranteed railway companies. The clause is unnecessary, as all railway companies will be assessed on their nett earnings. We have, however, provided in new clause (c) of Part III for the recovery, in the manner prescribed in section 13, of the interest on debentures issued by companies.

21. The publication ordered by the Council has been made as follows :—

<i>Gazette.</i>	<i>In English.</i>	<i>Date.</i>
<i>Gazette of India</i>	5th, 9th and 16th January, 1886.
<i>Fort St. George Gazette</i>	20th January, 1886.
<i>Bombay Government Gazette</i>	14th January, 1886.
<i>Calcutta Gazette</i>	13th and 20th January, 1886.
<i>North-Western Provinces and Oudh Government Gazette</i>	16th January, 1886.
<i>Central Provinces Gazette</i>	16th January, 1886.

22. We do not think that the measure has been so altered as to require re-publication and we recommend that it be passed as now amended.

A. COLVIN.
C. P. ILBERT.
T. C. HOPE.
V. N. MANDLIK.*
PEARI MOHAN MUKERJI.†
J. W. QUINTON.
ROBERT STEEL.
W. W. HUNTER.

The 22nd January, 1886.

* I differ from the majority on sections 1, 5, clause (d), and section 24. I think the Bill should terminate in one or two years; I think clause (d), section 5, should be modified or left out, and section 24 should be made applicable only to houses in principal towns and cities.

V. N. MANDLIK.

† I sign this Report with reservation of opinion on the following provisions, namely, (1) "and in each subsequent year" in section 4; (2) clause (j) of section 5; and (3) section 24.

PEARI MOHAN MUKERJI.

No. II.

A Bill for Imposing a tax on income derived from sources other than agriculture.

CONTENTS.**CHAPTER I.****PRELIMINARY.****SECTIONS.**

1. Extent and commencement.
2. Repeal.
3. Definitions.

CHAPTER II.**LIABILITY TO TAX.**

4. Incomes liable to the tax.
5. Exceptions.
6. Power to make exemptions.

CHAPTER III.**ASSESSMENT AND COLLECTION.****A.—Salaries and Pensions.**

7. Mode of payment in case of Government officials and pensioners.
8. Mode of payment in case of servants and pensioners of local authorities.
9. Mode of payment in case of servants and pensioners of companies and private employers.
10. Annual return by principal officer of company or association.

B.—Profits of Companies.

11. Annual statement of nett profits.
12. Power to require officers of companies to produce accounts.

C.—Interest on Securities.

13. Mode of payment of tax on interest on securities.

D.—Other Sources of Income.**Ordinary Mode of Assessment and Collection.**

14. Collector to determine persons chargeable.
15. Mode of making assessment.
16. List of incomes under two thousand rupees.
17. Notices to persons with incomes of two thousand rupees and upwards.
18. Power to modify ordinary procedure in special cases.
19. Time and place of payment.

Trustees, Agents, Managers and Incapacitated Persons.**SECTIONS.**

20. Trustees, guardians and committees of incapacitated persons to be charged.
21. Non-residents to be charged in names of their agents.
22. Receivers, managers, Courts of Wards, Administrators General and Official Trustees.
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Occupying Owners.

24. Provision for tax on occupying owners.

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25. Petition to Collector against assessment under Part IV.
26. Hearing of petition.
27. Petition to Commissioner for revision.
28. Power to summon witnesses, &c.,

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29. Tax when payable.
30. Mode and time of recovery.

CHAPTER VI.**SUPPLEMENTAL PROVISIONS.****Composition.**

31. Agreements for composition.

Receipts.

32. Receipts and their contents.

Amendment of Assessment.

33. Amendment of assessment.

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34. Failure to make payments or deliver returns or statements.
35. False statement in declaration.
36. Prosecution to be at instance of Collector.
37. Sections 193 and 228 of Penal Code to apply to proceedings.

Power to make Rules.

38. Power to make rules.

Miscellaneous.

39. Bar of suits in Civil Court.
40. Exercise of powers of Collector and Commissioner.
41. Obligation to furnish information respecting lodgers and employes.
42. Trustees and agents to furnish information as to beneficiaries and principals.
43. Trustees, &c., to furnish information as to income.

44. Obligation to furnish other information.
45. Sections 176 and 177 of Penal Code to apply to requisitions for information.
46. Service of notices.
47. Power to declare principal place of business or residence.
48. Saving in favour of payers of pándhari and capitation taxes.
49. Indemnity.
50. Powers exercisable from time to time.

THE FIRST SCHEDULE.—ENACTMENTS
REPEALED.

THE SECOND SCHEDULE.—SOURCES OF
INCOME AND RATES OF TAX.

THE THIRD SCHEDULE.—FORM OF PE-
TITION.

No. II.

*A Bill for Imposing a tax on income derived
from sources other than agriculture.*

WHEREAS it is expedient to impose a tax on income derived from sources other than agriculture; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- I. (1) This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf; and
Extent and commencement.
- (2) It shall come into force on the first day of April, 1886.
- (3) Any power conferred by this Act to make rules or to issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force.
2. On and from the day on which this Act comes into force the enactments specified in the first schedule to this Act shall be repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.
Repeal.
3. In this Act, unless there is something repugnant in the subject or context,—
Definitions.
 - (1) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund;
 - (2) "company" means an association carrying on business in British India, whose stock or funds are divided into shares and transferable, whether the company is incorporated or not, and

whether its principal place of business is situate in British India or not:

(3) "prescribed" means prescribed by the Governor General in Council by notification in the Gazette of India, or by the Governor General in Council or a Local Government by rules made under this Act: [New.]

(4) "salary" includes allowances, fees, commissions, perquisites or profits received, in lieu of or in addition to a fixed salary, in respect of an office or employment of profit; but, subject to any rules which may be prescribed in this behalf, it does not include travelling, tentage, horse or sumptuary allowance, or any other allowance granted to meet specific expenditure: [Trades and Professions Tax Bill, 1879, s. 12.]

(5) "income" means income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf: [Act VIII, 1872, s. 2.]

(6) "Magistrate" means a Presidency Magistrate or a Magistrate of the first or second class: [Act VIII, 1872, s. 2.]

(7) "person" includes a firm and a Hindu undivided family: [Act VIII, 1872, s. 2.]

(8) "defaulter" includes a company or firm making default under this Act: [Act VIII, 1872, s. 2.]

(9) "Collector" means the chief officer in charge of the revenue-administration of a district, and, in a presidency-town, any officer whom the Local Government, by notification in the official Gazette, may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency-town in which its principal place of business in British India is situate; and, in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the district or presidency-town in which the person has his residence: [Act VIII, 1872, s. 2, and Professions Tax Bill, 1879, s. 3.]

(10) "principal officer," used with reference to a local authority or a company or any other public body or association not being a local authority or company, means—[New.]

(a) the secretary, treasurer, manager or agent of the authority, company, body or association; or

(b) any person connected with the authority, company, body or association upon whom the Collector has caused a notice to be served of his intention of treating him as the principal officer thereof: and [cf. Act VIII, 1872, s. 45.]

(11) "Part" means a Part of the second schedule to this Act. [New.]

CHAPTER II.

LIABILITY TO TAX.

[Act VIII,
1872, ss. 5,
10, 14 and
16.]

4. Subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April, 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule.

Exceptions. 5. (1) Nothing in section 4 shall render liable to the tax—

[New.]

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land-revenue or subject to a local rate assessed and collected by officials of the Government, as such; or

[Act VI,
1880, ss. 3, 9
and 13; Ben.
Act II, 1880,
s. 5; and Act
XIV, 1867, s.
1.]

(b) any income derived from—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce; or

[New.]

(c) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (a), or by the cultivator, or the receiver of rent-in-kind, of any land with respect to which or the produce whereof any operation mentioned in clause (b) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue, or the cultivator or the receiver of the rent-in-kind, by reason of his connection with the land, requires as a dwelling-house, or as a store-house, factory or other out-building; or

(d) any profits of a shipping company incorporated or registered out of British India and having its principal place of business out of India and its ships ordinarily engaged in sea-going traffic out of Indian waters; or

[Act VIII,
1872, s. 3.]

(e) any income derived from property solely employed for religious or public charitable purposes; or

[Act VIII,
1872, s. 3.]

(f) any income which a person enjoys as a member of a company or of a firm or of a Hindu undivided family when the company or the firm or the family is liable to the tax; or,

(g) subject to any conditions and restrictions which may be prescribed in this behalf, such portion, not exceeding one-sixth, of the income in respect whereof a person would, but for this exception, be chargeable under this Act, as is deducted from the salary of the person under the authority or with the permission of the Government for the purpose of securing a deferred annuity to him or a provision to his wife or children after his death or is paid by the person to an insurance company in respect of an insurance or deferred annuity on his own life or on the life of his wife; or

(h) any interest on stock-notes; or

(i) the salary of any officer, warrant-officer, non-commissioned officer or private of Her Majesty's Forces or of Her Majesty's Indian Forces who is not in an employment which, according to the ordinary practice, is held indifferently by military persons and civilians, and whose salary does not exceed five hundred rupees per mensem; or

(j) any person whose income from all sources is less than five hundred rupees per annum.

(2) An officer or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under this section.

6. The Governor General in Council may, by notification in the Gazette of India, exempt from liability to the tax the whole or any part of the income of any class or tribe, or of any persons residing in any specified area, and may, by a like notification, revoke the exemption.

CHAPTER III.

ASSESSMENT AND COLLECTION.

A.—Salaries and Pensions.

7. In the case of a person receiving any salary, annuity, pension or gratuity from the Government, any sum payable to him by the Government in respect of the salary, annuity, pension or gratuity shall be reduced by the amount of the tax to which he is liable under Part I in respect thereof.

8. (1) In the case of a person receiving any salary, annuity, pension or gratuity from a local authority, the tax to which he is liable under Part I shall at the time of the payment to him of any of the salary, annuity, pension or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

(2) If that officer does not deduct and pay the tax as required by sub-section (1), he shall

without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(3) If, when any payment is made, the tax is from any cause not deducted, it may, and on the requisition of the Collector shall, be deducted when any salary, annuity, pension or gratuity is subsequently paid to the person liable to the tax.

(4) The power to deduct under this section shall be without prejudice to any other mode of recovery.

9. (1) The tax to which a person receiving any salary, annuity, pension or gratuity from a company, or from any other public body or association not being a local authority or company, or from a private employer, is liable under Part I shall be payable by him at the time when any portion of the salary, annuity, pension or gratuity is paid to him.

(2) The Collector may, subject to such conditions as may be prescribed, enter into an arrangement with any company, or any such body or association as aforesaid, or any private employer, with respect to the recovery on behalf of the Government by the company, body, association or employer of the tax to which any person receiving any salary, annuity, pension or gratuity from the company, body, association or employer is liable under Part I.

10. The principal officer of every local authority, and of every company, and of every other public body or association not being a local authority or company, shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, in the prescribed form, a return in writing showing—

(a) the name of every person who is receiving at the date of the return any salary, annuity or pension, or has received during the year ending on that date any gratuity, from the authority, company, body or association, as the case may be, and the address of every such person so far as it is known; and

(b) the amount of the salary, annuity, pension or gratuity so received by each such person, and the time at which the same becomes payable or, in the case of a gratuity, was paid.

B.—Profits of Companies.

11. The principal officer in British India of every company shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, a statement in writing signed by him of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day

of March in the year immediately preceding that for which the assessment is to be made, then of the nett profits so made during the year ending on the said thirty-first day of March.

12. (1) If the Collector has reason to believe that a statement delivered under section 11 is incorrect or incomplete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced, for the inspection of the Collector such of the accounts of the company as refer to the year to which the statement relates and as are in his possession or power.

(2) On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II, and the time when the amount shall be paid, and, subject to the provisions of this Act, that amount shall be payable accordingly.

C.—Interest on Securities.

13. (1) The tax payable under Part III in respect of the interest on any of the securities mentioned in that Part shall, at the time when and place where any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

(2) If that person does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

D.—Other Sources of Income.

Ordinary Mode of Assessment and Collection.

14. The Collector shall, from time to time, determine what persons are chargeable under Part IV, and the amount at which every person so chargeable shall be assessed.

15. (1) The assessment shall be made upon the income accruing to the person during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then upon the income accruing to him during the year ending on the said thirty-first day of March.

(2) In the case of a person for the first time becoming chargeable under Part IV within the

[Act VIII, 1872, s. 12.]

Power to require officers of companies to produce accounts.

[Act VIII, 1872, s. 15.]

Mode of payment of tax on interest on securities.

[New.]

[Act VIII, 1872, s. 25.]

Collector to determine persons chargeable.

[Act VIII, 1872, s. 26.]

Mode of making assessment.

year for which the assessment is to be made, or within the year next before that year, the assessment shall be made according to an average of his income for such period as the Collector, having regard to the circumstances, directs.

[License Tax Acts. See Bom. Act III, 1878, ss. 9 and 10. See also Act VIII, 1872, s. 27.]

16. (A) The Collector shall in each year prepare a list of the persons chargeable under Part IV whose annual income does not, in his opinion, amount to two thousand rupees.

(2) The list shall be in the prescribed language or languages, and shall state in respect of every such person the following particulars, namely:—

(a) his name, and the source or sources of the income in respect of which he is chargeable;

(b) the year or portion of the year for which the tax is to be paid;

(c) the place or places, district or districts, where the income accrues;

(d) the amount to be paid; and

(e) the place where, and the person to whom, the amount is to be paid.

(3) The list shall be filed in the office of the Collector, with a notification prefixed thereto requiring every person mentioned in the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(4) The list so filed shall be open to inspection at all reasonable times without any payment.

(5) The list, or such part or parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as the Local Government may consider to be best adapted for giving information to all persons concerned.

(6) The list to be prepared in each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

[Act VIII, 1872, s. 27.]

17. In the case of a person chargeable under Part IV whose annual income is, in the Collector's opinion, two thousand rupees or upwards, the Collector shall cause a notice to be served on him stating the particulars (a) to (e), both inclusive, mentioned in section 16, sub-section (2), and requiring him to pay, within sixty days from a date specified in the notice, the amount stated therein as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

18. (1) Notwithstanding anything contained in section 16 or section 17, the Local Government may make rules—

(a) authorising or directing a Collector in specified cases, or classes of cases, to include in a list under section 16 any

person who is liable to be served with a notice under section 17 instead of or in addition to serving him with such a notice, and to serve a notice under section 17 on any person liable to be included in a list under section 16 instead of or in addition to including him in such a list;

(b) authorising the Collector in any specified town or place to cause a general notice to be published, inviting every person chargeable under Part IV to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return, in a prescribed form published with the notice, of his income during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of his income during the year ending on the said thirty-first day of March;

(c) authorising the Collector in any presidency-town to cause a special notice to be served on any person chargeable under Part IV, inviting him to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return, in a prescribed form accompanying the notice, of his income computed in the manner described in clause (b) of this sub-section.

(2) A return delivered under rules made under clause (b) or clause (c) of sub-section (1) must state the period during which the income has actually accrued; and there must be added at the foot thereof a declaration that the income shown in the return is truly estimated on all the sources therein mentioned; that it has actually accrued within the period therein stated, and that the person making the return has no other source of income.

(3) When a Collector authorised in that behalf by rules made under clause (b) or clause (c) of sub-section (1) has caused a notice to be published or served under those rules, he shall not include any person to whom the notice applies in any list made under section 16 or serve a notice on him under section 17 until the time specified in the notice served under those rules has expired.

(4) Rules made under this section shall be published in the official Gazette.

19. Every amount specified as payable in a list or notice prepared or served under section 16 or section 17 shall be paid within the time, at the place, and to the person mentioned in the list or notice.

[New. cf. Bom. Act III, 1878, ss. 9 and 10, and Ben. Act II, 1880, s. 17.]

Trustees, Agents, Managers and Incapacitated Persons.

11, 17.] 20. A person being the trustee, guardian, curator or committee of any infant, married woman subject to the law of England, lunatic or idiot, and having the control of the property of the infant, married woman, lunatic or idiot, whether the infant, married woman, lunatic or idiot resides in British India or not, shall, if the infant, married woman, lunatic or idiot is chargeable under Part IV, be chargeable under that Part in like manner and to the same amount as the infant would be chargeable if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

7.] 21. Any person not resident in British India, whether a subject of Her Majesty or not, being in receipt, through an agent, of any income chargeable under Part IV, shall be chargeable under that Part in the name of the agent in the like manner and to the like amount as he would be chargeable if he were resident in British India and in direct receipt of that income.

7.] 22. Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrators General of Bengal, Madras and Bombay, and the Official Trustees shall be chargeable under Part IV in respect of all income officially in their possession or under their control which is liable to assessment under that Part.

7.] 23. When a trustee, guardian, curator, committee or agent is, as such, assessed under Part IV, or when a receiver or manager appointed as aforesaid, a Court of Wards, an Administrator General or an Official Trustee is assessed under that Part in respect of income officially received, the person or Court so assessed may, from time to time, out of the money coming to his or its possession as trustee, guardian, curator, committee or agent, or as receiver, manager, Court of Wards, Administrator General or Official Trustee, retain so much as is sufficient to pay the amount of the assessment.

Occupying Owners.

Provision for tax on occupying owners. 24. (1) Where a building is occupied by its owner, it shall be deemed a source of income within the meaning of this Act, and, if liable to be assessed under this Act, shall be assessed at five-sixths of the gross annual rent at which it may reasonably be expected to let, and, in the case of a dwelling-house, may be expected to let unfurnished.

(2) "Owner," as used in this section with reference to a building, means the person who

would be entitled to receive the rent of the building if the building were let to a tenant.

CHAPTER IV.

REVISION OF ASSESSMENT.

25. (1) Any person objecting to the amount [Act VIII, at which he is assessed, or 1872, s. 30.] denying his liability to be assessed, under Part IV may apply by petition to the Collector to have the assessment reduced or cancelled.

(2) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 16, or in the notice served under section 17, as the case may be. But the Collector may receive a petition after the expiration of that period if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(3) The petition shall, as nearly as circumstances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of complaints.

26. The Collector shall fix a day and place for [Ben. Act II, the hearing of the petition, 1880, s. 19.] and on the day and at the place so fixed, or on the day and at the place, if any, to which he has adjourned the hearing, shall hear the petition and pass such order thereon as he thinks fit.

27. Subject to the control of the Local Government, the Commissioner of [Ben. Act II, 1880, s. 21.] the Division, on the petition of any person deeming himself aggrieved by an order under section 12, sub-section (2), or section 26, shall if the amount of the assessment to which the petition relates is two hundred and fifty rupees or upwards, and may in his discretion if the amount of the assessment is less than two hundred and fifty rupees, call for the record of the case, and pass such order thereon as he thinks fit.

28. The Collector or Commissioner may, for [Ben. Act II, 1880, s. 22.] the purpose of enabling him to determine how the petitioner or the company which he represents should be assessed, summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.

Provided that the Collector or Commissioner XIV of 1882. shall not call for any evidence except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

CHAPTER V.

RECOVERY OF ARREARS OF TAX.

[Act VIII, 1872, s. 35.] 29. The tax chargeable under this Act shall be payable at the time appointed in that behalf in or under this Act, or, if a time is not so appointed, then on the first day of June in each year.

[Act VIII, 1872, s. 36, and Ben. Act II, 1880, s. 24.] 30. (1) In any case of default under this Act the Collector, in his discretion, may recover a sum not exceeding double the amount of the tax either as if it were an arrear of land-revenue or by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the territories administered by the Local Government to which he is subordinate, or may pass an order that a sum not exceeding double that amount shall be recovered from the defaulter:

Provided that, where a person has presented a petition under section 25, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(2) The Local Government may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (1) for the recovery of the tax chargeable under this Act.

XIV of 1882. (3) An order passed by the Collector under sub-section (1) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant; and the order may be enforced in manner provided by the Code of Civil Procedure for the enforcement of decrees for money; and the procedure under the said Code in respect of the following matters, namely—

- (a) sales in execution of decrees,
- (b) arrest in execution of decrees for money,
- (c) execution of decrees by imprisonment,
- (d) claims to attached property, and
- (e) execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code upon the Court shall be exercised and discharged by the Collector by whom the order has been made or to whom a copy thereof has been sent for execution according to the provisions of the said Code, sections 223 and 224.

[Bom. Act III 1878, s. 20.] (4) The Local Government may direct, with respect to any specified area, that the tax chargeable under this Act shall be recovered therein with, and as an addition to, any municipal tax or local rate by the same person and

in the same manner as the municipal tax or local rate is recovered.

(5) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

Composition.

31. (1) If a company or person desires to compound for the tax assessable under Part II or Part IV, as the case may be, the Collector may, subject to such rules as may be prescribed in this behalf, agree with the company or person for a composition for the tax on such terms and for such period as he thinks fit.

(2) The agreement shall provide for the payment, in each year of the period comprised in the agreement, of the amount of the composition; and that amount shall be recoverable in the same manner and by the same means as any other assessment made under Part II or Part IV, as the case may be.

Receipts.

32. When any money is paid under this Act to the Collector or is recovered thereunder by him, he shall give a receipt for the same, specifying—

- (a) the date of the payment or recovery of the money;
- (b) the amount paid or recovered;
- (c) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable;
- (d) the year or part of the year for which the tax was payable;
- (e) the place or places, district or districts, where the income accrues; and
- (f) such other particulars, if any, as may be prescribed.

Amendment of Assessment.

33. If a company or person assessed under Part II or Part IV ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person or its or his representative in interest may apply to the Collector during or within three months after the end of the year, and the Collector, on

proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

Penalties.

Act VIII,
1872, s. 38.]

Failure to make payments or deliver returns or statements.

34. (1) If a person fails—

(a) to deduct and pay any tax as required by section 8, sub-section (1), or section 13, sub-section (1), or

(b) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 10 or section 11, or

(c) to produce, or cause to be produced, on or before the date mentioned in a notice under section 12, such accounts as are referred to in the notice,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(2) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

Act VIII,
1872, s. 39.]

35. If a person makes a statement in a declaration mentioned in section 18, sub-section (2), which is false, and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

Act VIII,
1872, s. 40.]

36. A person shall not be proceeded against for an offence under section 34 or section 35, except at the instance of the Collector.

Act VIII,
1872, s. 41.]

37. Any proceeding under section 12 or Sections 193 and 228 of the Indian Penal Code shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

Act V of 1860,

Power to make Rules.

Act VIII,
1872, s. 46,
Act XXII, 1860,
1873 and
1874.]

38. (1) The Governor General in Council may make rules consistent with this Act for ascertaining and determining income liable to assessment, for preventing the disclosure of particulars contained in documents delivered or produced with respect to assessments under Part IV, and, generally, for carrying out the purposes of this Act, and may delegate to a Local Government the power to make such rules so far as regards the territories subject to that Government.

(2) In making a rule for preventing the disclosure of any particulars referred to in sub-section (1), the Governor General in Council may direct that a public servant committing a breach of the rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code: •

(3) But a person committing any such offence shall not be liable to be prosecuted therefor without the previous sanction of the Local Government.

(4) Rules made under this section shall be published in the official Gazette.

Miscellaneous.

39. No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act. [Act VIII, 1872, s. 42.]

40. All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised and performed by such other officer or person as the Local Government appoints in this behalf. [Act VIII, 1872, s. 43.]

41. An officer or person exercising all or any of the powers of a Collector under this Act may, by notice, require any person to furnish a list, in the prescribed form, containing, to the best of his belief,— [Act VIII, 1872, ss. 24 and 39.]

(a) the name of every inmate or lodger resident in any house used by him as a dwelling-house or let by him in lodgings;

(b) the name of every other person receiving salary or emoluments amounting to forty-one rupees ten annas and eight pies per mensem, or five hundred rupees per annum, or upwards, employed in his service, whether resident in any such house as aforesaid or not; and

(c) the place of residence of such of those persons as are not resident in any such house, and of any inmate or lodger in any such house who has a place of residence elsewhere at which he is liable under this Act to be assessed, and who desires to be assessed at that place.

42. An officer or person exercising all or any of the powers aforesaid may, by notice, require any person whom he has reason to believe to be a trustee, guardian, curator, committee or agent to deliver or cause to be delivered a statement of the names of the persons for or of whom he is trustee, guardian, curator, committee or agent. [Act VIII, 1872, s. 18.]

43. An officer or person exercising all or any of the said powers may, by notice, require a trustee, guardian, curator, committee or agent, or a receiver or manager

Trustees, &c., to furnish information as to income. [Act VIII, 1872, s. 18.]

appointed by any Court in India, or a Court of Wards, Administrator General or Official Trustee, to furnish such returns of income liable to assessment under Part IV as may be prescribed.

[Bengal Act II, 1880, s. 3, cf. s. 28 of this Bill.]

44. An officer or person exercising all or any of the said powers may, at the instance of any person respecting whose assessment or the amount thereof any doubt exists, require any person to furnish such information as he deems to be necessary for the purpose of ascertaining facts relevant to the assessment or its amount.

[Act VIII, 1872, ss. 38 & 39.]

45. A person required to furnish any information under section 41, section 42, section 43 or section 44 shall be legally bound to furnish the same in such manner and within such time as may be specified in the requisition for the information.

[Act VIII, 1872, s. 44, 38 & 39 Vic., c. 55, s. 267, and Act VIII, 1885, s. 148.]

46. (1) A notice under this Act may be served on the person therein named either by a prepaid letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866, or by the delivery or tender to him of a copy of the notice.

(2) If a notice is served by registered letter, it shall be presumed to have been served at the time when the letter would be delivered in the ordinary course of post, and proof that the letter was properly addressed and put into the post shall be sufficient to raise the presumption that the notice was duly served at that time.

(3) If the notice is to be served otherwise than by registered letter, the service shall, whenever it may be practicable, be on the person named in the notice, or, in the case of a firm, on some member thereof, or, in the case of a Hindu undivided family, on the manager of the joint estate of the family:

(4) But when the person, member or manager cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the serving-officer shall fix the copy of the notice on the outer door of the house in which the person, firm or family therein named ordinarily resides or carries on business.

[Act VIII, 1872, s. 45.]

47. (1) When a company or firm has several places of business in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be the principal place of business.

(2) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of

this Act, be deemed to be the principal place of business.

(3) When a person has several places of residence in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(4) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(5) The powers given by this section may be delegated to and exercised by such officers as the Governor General in Council or the Local Government, as the case may be, appoints in this behalf.

48. Where a person is in respect of any period liable to the tax

Saving in favour of payers of pāndharī and capitation taxes. under this Act he shall not in respect of that period

be assessed to the pāndharī-tax levied in the Central Provinces under Act XIV of 1867, or to the capitation-tax, or the land-rate in lieu thereof, levied in British Burma under the Burma Land and Revenue Act, 1876.

II of 1876

49. Every person deducting, retaining or paying any tax in pursuance of this Act or of any arrangement under section 9, sub-section (2), in respect of income belonging to another person, is hereby indemnified for the deduction, retention or payment thereof.

50. All powers conferred by or conferable under this Act may be exercised from time to time as occasion requires.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1878.	The Northern India License Act, 1878.	So much as has not been repealed.
Act No. VI of 1880.	The Indian License Acts Amendment Act, 1880.	The whole.

ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878.	The Madras License Act, 1878.	So much as has not been repealed.
Act No. III of 1880.	An Act to amend Madras Act III of 1878 as amended by Act VI of 1880.	The whole.

ACT OF THE GOVERNOR OF BOMBAY IN COUNCIL.

THE SECOND SCHEDULE—*contd.*

Number and year.	Short title.	Extent of repeal.	FIRST COLUMN	SECOND COLUMN.
			Source of Income.	Rate of Tax.
Act No. III of 1878.	The Bombay License Act, 1878.	So much as has not been repealed.		
ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.				
			Profits of a company	PART II. PROFITS OF COMPANIES. Five pies in the rupee on the whole of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then on the whole of the nett profits so made during the year ending on the said thirty-first day of March.
				PART III. INTEREST ON SECURITIES. Interest becoming due on or after the first day of April, 1886, and payable in British India, on— (a) promissory notes, debentures, stock or other securities of the Government of India (including securities of the Government of India whereon interest is payable out of British India by draft on any place in British India), or (b) bonds or debentures charged by the Imperial Parliament on the revenues of India, or (c) debentures or other securities for money issued by or on behalf of a local authority or company. Five pies in the rupee on such interest, unless the owner of the security produces a certificate signed by the Collector that his annual income from all sources is less than Rs. 500 in which case no deduction shall be made from the interest, or unless he produces a like certificate that his income from all sources is less than Rs. 2,000, in which case the rate shall be four pies in the rupee.
THE SECOND SCHEDULE. SOURCES OF INCOME AND RATES OF TAX. (See section 4.)				
FIRST COLUMN.	SECOND COLUMN.			
Source of Income.	Rate of Tax.			
PART I. SALARIES AND PENSIONS.				
1. Any salary, annuity, pension or gratuity paid in British India to or on behalf of any person residing in British India or serving on board a ship plying to or from British Indian ports, whether on account of himself or another person.				
2. Any salary, annuity, pension or gratuity paid by the Government, or by a local authority established in the exercise of the powers of the Governor General in Council on that behalf, to or on behalf of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty.				
(a) If the income amounts to Rs. 2,000 per annum, or Rs. 166-10-8 per mensem, or upwards—five pies in the rupee.				
(b) If the income is less than Rs. 2,000 per annum, or Rs. 166-10-8 per mensem,—four pies in the rupee.				
Any source of income not included in Part I, Part II or Part III of this schedule.				
				PART IV. OTHER SOURCES OF INCOME. (a) If the annual income is assessed at— not less than Rs. 500 but less than Rs. 750 the tax shall be Rs. 10 " " " 750 " " 1,000 " " 15 " " " 1,000 " " 1,250 " " 20 " " " 1,250 " " 1,500 " " 28 " " " 1,500 " " 1,750 " " 35 " " " 1,750 " " 2,000 " " 42 (b) If the annual income is assessed at Rs. 2,000 or upwards—five pies in the rupee on the income.

THE THIRD SCHEDULE.

FORM OF PETITION.

(See section 25.)

TO THE COLLECTOR OF

The day of 188 .

The petition of A. B. of

SHEWETH as follows—

1.—Under Act No. of 1886, your petitioner has been assessed in the sum of rupees for the year commencing the first day of April, 188 .

2.—Your petitioner's income and profits accruing and arising from [here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise] for the year ending the day of last were rupees [as will appear from the documents of which a list is presented herewith.*]

3.—Such income and profits actually accrued and arose during a period of months and days [here state the exact number of months and days in which the income and profits accrued and arose].

4.—During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly [or that he may be declared not to be chargeable under the said Act].

(Signed) A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

* These words are to be inserted if the petitioner relies on documents. The list, if the petitioner so wishes, may be presented in a sealed envelope.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 6, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations, on the 5th February, 1886, and was referred to a Select Committee, with instructions to submit their Report within one month:—

NO. 2 OF 1886.

A Bill to amend the law relating to Government Securities.

WHEREAS it is expedient to amend the law relating to Government securities in manner hereinafter appearing; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Short title and commencement. Securities Act, 1886; and

(2) It shall come into force at once.

2. It shall be read with, and taken as part of, the Indian Securities Act, 1885, as amended by this Act.

3. The words "issued before the first day of April, 1886," in section 3, sub-section (1), of the Indian Securities Act, 1885, are hereby repealed.

4. (1) In the case of any public office to which the Governor General in Council may, from time to time, by notification in the Gazette of India, declare this section to apply, a Government security may be made, or indorsed, payable to, or to the order of, the holder for the time being of the office.

(2) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder for the time being of the office to the succeeding holder for the time being of the office from the date on which the latter takes charge of the office.

(3) When the holder for the time being of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the title of his office.

5. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, the holder of a Government security shall not be said to indorse the security, or be called the indorser thereof, if, when he signs the same for the purpose of negotiation, he inscribes his signature for that purpose elsewhere than on the back of the security itself.

6. The Governor General in Council may, from time to time, make rules to prescribe—

(a) the mode in which payment of interest in respect of Government securities is to be recorded and acknowledged; and

(b) the circumstances under which Government securities must be renewed before further payment of interest thereon can be claimed.

STATEMENT OF OBJECTS AND REASONS.

IN paragraph 5 of the Report submitted in October last by the Select Committee on the Bill which became Act XIX of 1885, it was stated that the question of applying the rule of survivorship to Government securities issued after as well as before the first day of April, 1886, would be further considered during the Calcutta session. The question has now been fully discussed, and the Government of India has decided to propose the maintenance of the rule of survivorship which has hitherto obtained. Effect will be given to this decision by the repeal of the words in section 3, sub-section (1), Act XIX of 1885, which restrict the operation of that section to Government securities issued before the first day of April, 1886.

2. By sections 4 and 5 it is proposed to introduce into the law relating to Government securities provisions (a) enabling holders for the time being of public offices to hold those securities, and (b) prohibiting the making of indorsements on allonges annexed to them.

Section 4 of the Bill, in providing that Government securities may be made and indorsed payable to the holder for the time being of an office, follows the Bills of Exchange Act, 1882 (45 & 46 Vic., c. 61), and will put an end to the public inconvenience which is caused by the present uncertainty as to the state of the law in India.

As regards section 5, the risk of fraud which attends the practice of writing indorsements upon allonges is held to justify the prohibition of annexing them to instruments which, like Government securities, are readily renewable.

3. Section 6 merely empowers the Governor General in Council to make authoritative rules for the maintenance of existing practice with respect to the record and acknowledgment of payment of interest and to the renewal of securities which have become covered with indorsements.

A. COLVIN.

The 29th January, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 13, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th February, 1886, and was referred to a Select Committee, with instructions to submit their Report within one month:—

NO. 2 OF 1886.

A Bill to amend the law relating to Government Securities.

WHEREAS it is expedient to amend the law relating to Government securities in manner hereinafter appearing; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian
Short title and com- Securities Act, 1886;
mencement.

(2) It shall come into force at once.

2. It shall be read with, and taken as part of,
of 1885. Act to be read with the Indian Securities Act,
Act XIX of 1885. 1885, as amended by this
Act.

3. The words "issued before the first day of
Repeal of part of April, 1886," in section 3,
of 1885. section 3, Act XIX of sub-section (1), of the In-
1885. dian Securities Act, 1885,
are hereby repealed.

4. (1) In the case of any public office to
Holding of Govern- which the Governor Gene-
ment securities by hold- ral in Council may, from
ers for the time being time to time, by notifica-
of public offices. tion in the *Gazette of*

India, declare this section to apply, a Govern-
ment security may be made, or indorsed, pay-
able to, or to the order of, the holder for the
time being of the office.

(2) When a Government security is made or
indorsed as aforesaid, it shall be deemed to be
transferred without any or further indorsement
from each holder for the time being of the office
to the succeeding holder for the time being of
the office from the date on which the latter
takes charge of the office.

(3) When the holder for the time being of
the office indorses to a third party a Govern-
ment security made or indorsed as aforesaid,
he shall subscribe the indorsement with his
name and the title of his office.

5. Notwithstanding anything in section 15 of
the Negotiable Instruments
Prohibition of indorse- the holder of a
ments on allonges to Act, 1881, Government security shall
Government Securities. not be said to indorse the security, or be called
the indorser thereof, if, when he signs the same
for the purpose of negotiation, he inscribes his
signature for that purpose elsewhere than on
the back of the security itself.

6. The Governor General in Council may,
Power of Governor from time to time, make
General in Council to rules to prescribe—
make rules.

(a) the mode in which payment of interest
in respect of Government securities
is to be recorded and acknowledged;
and

(b) the circumstances under which Gov-
ernment securities must be renewed
before further payment of interest
thereon can be claimed.

STATEMENT OF OBJECTS AND REASONS.

IN paragraph 5 of the Report submitted in October last by the Select Committee on the Bill which became Act XIX of 1885, it was stated that the question of applying the rule of survivorship to Government securities issued after as well as before the first day of April, 1886, would be further considered during the Calcutta session. The question has now been fully discussed, and the Government of India has decided to propose the maintenance of the rule of survivorship which has hitherto obtained. Effect will be given to this decision by the repeal of the words in section 3, sub-section (1), Act XIX of 1885, which restrict the operation of that section to Government securities issued before the first day of April, 1886.

2. By sections 4 and 5 it is proposed to introduce into the law relating to Government securities provisions (a) enabling holders for the time being of public offices to hold those securities, and (b) prohibiting the making of indorsements on allonges annexed to them.

Section 4 of the Bill, in providing that Government securities may be made and indorsed payable to the holder for the time being of an office, follows the Bills of Exchange Act, 1882 (45 & 46 Vic., c. 61), and will put an end to the public inconvenience which is caused by the present uncertainty as to the state of the law in India.

As regards section 5, the risk of fraud which attends the practice of writing indorsements upon allonges is held to justify the prohibition of annexing them to instruments which, like Government securities, are readily renewable.

3. Section 6 merely empowers the Governor General in Council to make authoritative rules for the maintenance of existing practice with respect to the record and acknowledgment of payment of interest and to the renewal of securities which have become covered with indorsements.

A. COLVIN.

The 29th January, 1886.

S. HARVEY JAMES,

Offg. Secy. to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 20, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th February, 1886, and was referred to a Select Committee, with instructions to submit their Report within one month :—

NO. 2 OF 1886.

A Bill to amend the law relating to Government Securities.

WHEREAS it is expedient to amend the law relating to Government securities in manner hereinafter appearing; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian
Short title and com- Securities Act, 1886;
mencement. and

(2) It shall come into force at once.

2. It shall be read with, and taken as part of,
885. Act to be read with the Indian Securities Act,
Act XIX of 1885. 1885, as amended by this Act.

3. The words "issued before the first day of
Repeal of part of April, 1886," in section 3,
885. section 3, Act XIX of sub-section (1), of the In-
1885. dian Securities Act, 1885,
are hereby repealed.

4. (1) In the case of any public office to
Holding of Govern- which the Governor General in Council may, from
ment securities by hold- time to time, by notifica-
ers for the time being tion in the *Gazette of*
of public offices.

India, declare this section to apply, a Govern-
ment security may be made, or indorsed, pay-
able to, or to the order of, the holder for the
time being of the office.

(2) When a Government security is made or
indorsed as aforesaid, it shall be deemed to be
transferred without any or further indorsement
from each holder for the time being of the office
to the succeeding holder for the time being of
the office from the date on which the latter
takes charge of the office.

(3) When the holder for the time being of
the office indorses to a third party a Govern-
ment security made or indorsed as aforesaid,
he shall subscribe the indorsement with his
name and the title of his office.

5. Notwithstanding anything in section 15 of
the Negotiable Instruments
Prohibition of indorse- the holder of a
ments on allonges to Act, 1881, the holder of a
Government securities. Government security shall
not be said to indorse the security, or be called
the indorser thereof, if, when he signs the same
for the purpose of negotiation, he inscribes his
signature for that purpose elsewhere than on
the back of the security itself. XXV
1881.

6. The Governor General in Council may,
Power of Governor from time to time, make
General in Council to rules to prescribe—
make rules.

(a) the mode in which payment of interest
in respect of Government securities
is to be recorded and acknowledged;
and

(b) the circumstances under which Gov-
ernment securities must be renewed
before further payment of interest
thereon can be claimed.

STATEMENT OF OBJECTS AND REASONS.

IN paragraph 5 of the Report submitted in October last by the Select Committee on the Bill which became Act XIX of 1885, it was stated that the question of applying the rule of survivorship to Government securities issued after as well as before the first day of April, 1886, would be further considered during the Calcutta session. The question has now been fully discussed, and the Government of India has decided to propose the maintenance of the rule of survivorship which has hitherto obtained. Effect will be given to this decision by the repeal of the words in section 3, sub-section (1), Act XIX of 1885, which restrict the operation of that section to Government securities issued before the first day of April, 1886.

2. By sections 4 and 5 it is proposed to introduce into the law relating to Government securities provisions (a) enabling holders for the time being of public offices to hold those securities, and (b) prohibiting the making of indorsements on allonges annexed to them.

Section 4 of the Bill, in providing that Government securities may be made and indorsed payable to the holder for the time being of an office, follows the Bills of Exchange Act, 1882 (45 & 46 Vic., c. 61), and will put an end to the public inconvenience which is caused by the present uncertainty as to the state of the law in India.

As regards section 5, the risk of fraud which attends the practice of writing indorsements upon allonges is held to justify the prohibition of annexing them to instruments which, like Government securities, are readily renewable.

3. Section 6 merely empowers the Governor General in Council to make authoritative rules for the maintenance of existing practice with respect to the record and acknowledgment of payment of interest and to the renewal of securities which have become covered with indorsements.

A. COLVIN.

The 29th January, 1886.

S. HARVEY JAMES,

Offg. Secy. to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th February, 1886;—

No. 3 OF 1886.

A Bill to amend the North-Western Provinces Rent Act, 1881.

WHEREAS it is expedient to amend the North-Western Provinces Rent Act, 1881; It is hereby enacted as follows:—

1. This Act may be called the North-Western Provinces Rent Act, 1886; and it shall come into force at once.
Short title and commencement.
2. For the last paragraph of section 95 of the North-Western Provinces Rent Act, 1881, the following shall be substituted, namely:—
Amendment of section 95 of Act XII of 1881.
3. "For the purposes of the Court-fees Act, 1870, the amount of fee payable in the cases next hereinafter mentioned shall be computed as follows:—
 - (i) in applications under clause (c), and in appeals from orders passed on applications under that clause, as in a suit for possession of the land to which the application or appeal relates;
 - (ii) in applications under clauses (l), (n), (o) and (p), and in appeals from orders passed on applications under clauses (d), (e), (f), (l), (n), (o), (p), (q) and (s), according to the rent of the land to which the application or appeal relates payable for the year next before the date of presenting the application, or, if in any case the fee cannot be so computed, then according to the annual letting value of the land as estimated by the applicant or appellant, as the case may be;
 - (iii) in applications under clause (m), and in appeals from orders passed on applications under clauses (j), (m) and (t), according to the amount claimed in the application or in the petition of appeal, as the case may be."

New sections inserted after section 100 of same Act.

3. After section 100 of the same Act, the following sections shall be inserted, namely:—

"100A. The Board may, on cause shown to its satisfaction, transfer any suit, application or appeal, or class of suits, applications or appeals, from any Court of Revenue to any other Court of Revenue competent as regards the nature of the case or class of cases to deal therewith under the provisions of this Act.

"100B. (1) The Commissioner of a Division may, with the sanction of the Local Government, transfer any appeal or class of appeals pending before himself to any Collector of a district within his Division.

"(2) The order passed by a Collector on an appeal transferred to him by the Commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the Commissioner, and not otherwise.

"(3) The Local Government may by order recall any appeal transferred to a Collector under sub-section (1), and refer it for disposal to the Commissioner of the Division by whom it was transferred."

4. In section 189 of the same Act, after the words "one hundred rupees, or" the following shall be inserted, namely:—

"in which the rent payable by the tenant has been a matter in issue and has been determined, or"

5. In the same Act the last twelve words of section 196, the last twelve words of clause (a) of both sections 193 and 196, and the last six words of section 197, are repealed.

6. In section 194 of the same Act the word "other" is repealed; and in clause (b), of the same section, for the word and figures "section 99" the words and figures "sections 99 and 100" shall be substituted.

7. For section 195 of the same Act the following shall be substituted, namely:—

"195. The orders of an Assistant Collector of the first class on applications mentioned in section 98 shall be final."

8. In section 198 of the same Act, for the word and figures "section 100" the words and figures "sections 99 and 100" shall be substituted.

9. In section 199 of the same Act, after the words "The Board may" the words "notwithstanding anything hereinbefore contained" shall be inserted.

Addition to section 211 of same Act.

10. In section 211, after clause (d) the following shall be inserted, namely:—

"(e) as to the transfer of appeals to Collectors under section 100B".

11. Nothing in this Act shall confer a right to appeal from any order passed before the coming into force of this Act from which an appeal would not have lain, if this Act had not been passed.

STATEMENT OF OBJECTS AND REASONS.

THE objects of this Bill are (a) to check the growth of an irregular system of appeal which has arisen from an abuse of the powers of applying for a revision of certain orders of the Revenue Courts granted by Act XII of 1881, (b) to enable the Local Government to relieve Commissioners of a portion of their judicial work by empowering them to transfer appeals pending before them to Collectors for disposal, (c) to give a right of appeal in rent-suits decided by a Collector or Assistant Collector of the first class where the rent payable is disputed and determined, and (d) to enable the Board of Revenue to transfer suits, applications or appeals from one subordinate Court to another.

Act XII of 1881 declares that certain orders of Collectors and Assistant Collectors of the first class on applications shall be final, subject to revision by the Commissioner of the Division or by the Board. Applications for revision to these tribunals can be made on a stamp of one rupee, and the consequence is that two appeals, the first to Commissioner, the second to the Board, are virtually granted on payment of a light stamp-duty in cases in which the legislature held that the orders should be final, and that some Commissioners are swamped, and the Board unduly occupied, with judicial work. A large proportion of these applications are rejected, but the careful scrutiny of the petition, and very often the examination of the record of the Court of first instance which must precede an order rejecting the petition, are a fruitless waste of the time of highly paid officials, and the facility and cheapness with which such applications can be presented hold out an encouragement to frivolous appeals. At the same time it is admitted that there is a proportion, though a small one, in these cases where orders passed by the Courts of first instance may call for a remedy. The Bill sweeps away the revisional jurisdiction of Commissioners altogether, but gives in lieu of it a right of appeal on an *ad valorem* stamp. A second appeal is allowed when the Commissioner reverses or modifies the decree of the Court of first instance.

2. The amount of judicial work connected with rent-suits has been increasing year by year, especially in the Benares and Meerut Divisions. It is therefore proposed to give power to Commissioners under the control of the Local Government to transfer for disposal appeals pending in their Courts to Collectors. This is on the analogy of the Bengal Civil Courts Act, which empowers District Judges, subject to the orders of the High Court, to refer civil appeals for disposal to Subordinate Judges.

3. Section 189 of Act XII of 1881 makes the judgments of the Collector of a district and of an Assistant Collector of the first class appealable to the District Judge in certain classes of suits, where the value of the subject-matter exceeds Rs. 100. An exception to this pecuniary limit is admitted in suits where the proprietary title to land is determined. It is now proposed to extend the exception to cases where the rent is disputed and determined. In rent-suits this is frequently the main point of contention, and the decision in a single suit may govern rents in an entire village. It is desirable, therefore, that either party should be able to appeal from an adverse decision on such a point, and that the risk of contradictory decisions of different tribunals should be avoided.

4. Opportunity has also been taken to add a section to the Act empowering the Board of Revenue, on cause shown to its satisfaction, to transfer suits, applications or appeals from one subordinate Court to another. This is in accordance with the power granted to Civil Courts by the Code of Civil Procedure, and the want of such a power in the highest Revenue Court may force an officer to try a case in which he is interested in his executive capacity, such as President of a District or Municipal Board, or Manager for the Court of Wards.

J. W. QUINTON.

The 19th February, 1886.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th February, 1886:—

No. 4 OF 1886.

A Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

WHEREAS it is expedient to amend the North-Western Provinces Land-Revenue Act, 1873, in manner hereinafter appearing; It is hereby enacted as follows:—

1. After section 11 the following section shall be inserted, namely:—

"11A. (1) The Local Government may, from time to time, with the previous sanction of the Governor General in Council,

New section inserted after section 11.

Appointment, powers and duties of Additional Commissioner.

appoint an Additional Commissioner in a Division.

"(2) An Additional Commissioner shall hold his office during the pleasure of the Local Government.

"(3) An Additional Commissioner shall exercise such powers, and discharge such duties, of the Commissioner of the Division under this Act, or under any other law for the time being in force, as the Local Government may from time to time prescribe, but only in such cases as the Commissioner of the Division may direct.

"(4) This Act and every other law for the time being applicable to the Commissioner of the Division shall apply to the Additional Commissioner when exercising any powers or discharging any duties under sub-section (3), as if he were the Commissioner of the Division."

STATEMENT OF OBJECTS AND REASONS.

THE North-Western Provinces Land-revenue Act contains no provision, such as is found in the Codes of the Lower Provinces of Bengal, Bombay, the Punjab and Central Provinces, authorizing the appointment of Additional Commissioners.

At present the Commissioner of Benares is quite unable to cope with the judicial work pending in his Court, and it is very desirable that the Lieutenant-Governor should have the power, which exists in other provinces, of reinforcing the Commissioner under exceptional circumstances by a substantive, though temporary, measure of direct relief and assistance.

This Bill has been drawn enabling the Local Government, with the previous sanction of the Governor General in Council, to effect this, by appointing an Additional Commissioner and distributing the judicial work between him and the Commissioner of the Division.

The 19th February, 1886.

J. W. QUINTON.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 27, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th February, 1886;—

NO. 3 OF 1886.

A Bill to amend the North-Western Provinces Rent Act, 1881.

WHEREAS it is expedient to amend the North-Western Provinces Rent Act, 1881; It is hereby enacted as follows:—

1. This Act may be called the North-Western Provinces Rent Act, 1886; and it shall come into force at once.

2. For the last paragraph of section 95 of the North-Western Provinces Rent Act, 1881, the following shall be substituted, namely:—

"For the purposes of the Court-fees Act, 1870, the amount of fee payable in the cases next hereinafter mentioned shall be computed as follows:—

(i) in applications under clause (c), and in appeals from orders passed on applications under that clause, as in a suit for possession of the land to which the application or appeal relates;

"(ii) in applications under clauses (l), (n), (o) and (p), and in appeals from orders passed on applications under clauses (d), (e), (f), (l), (n), (o), (p), (q) and (s), according to the rent of the land to which the application or appeal relates payable for the year next before the date of presenting the application, or, if in any case the fee cannot be so computed, then according to the annual letting value of the land as estimated by the applicant or appellant, as the case may be;

"(iii) in applications under clause (m), and in appeals from orders passed on applications under clauses (j), (m) and (t), according to the amount claimed in the application or in the petition of appeal, as the case may be."

New sections inserted after section 100 of same Act.

3. After section 100 of the same Act the following sections shall be inserted, namely:—

"100A. The Board may, on cause shown to its satisfaction, transfer any suit, application or appeal, or class of suits, applications or appeals, from any Court of Revenue to any other Court of Revenue competent as regards the nature of the case or class of cases to deal therewith under the provisions of this Act.

"100B. (1) The Commissioner of a Division may, with the sanction of the Local Government, transfer any appeal or class of appeals pending before himself to any Collector of a district within his Division.

"(2) The order passed by a Collector on an appeal transferred to him by the Commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the Commissioner, and not otherwise.

"(3) The Local Government may by order recall any appeal transferred to a Collector under sub-section (1), and refer it for disposal to the Commissioner of the Division by whom it was transferred."

4. In section 189 of the same Act, after the words "one hundred rupees, or" the following shall be inserted, namely:—

"in which the rent payable by the tenant has been a matter in issue and has been determined, or".

5. In the same Act the last twelve words of section 196, the last twelve words of clause (a) of both sections 193 and 196, and the last six words of section 197, are repealed.

6. In section 194 of the same Act the word "other" is repealed; and in clause (b), of the same section, for the word and figures "section 99" the words and figures "sections 99 and 100" shall be substituted.

Amendment of section 194 of same Act.

7. For section 195 of the same Act the following shall be substituted, namely:—

"195. The orders of an Assistant Collector of the first class on applications mentioned in section 98 shall be final."

8. In section 198 of the same Act, for the word and figures "section 100" the words and figures "sections 99 and 100" shall be substituted.

Substitution of new section for section 195 of same Act.

9. In section 199 of the same Act, after the words "The Board may" the words "notwithstanding anything hereinbefore contained" shall be inserted.

Section 199 of same Act amended.

Addition to section 211 of same Act.

10. In section 211, after clause (d) the following shall be inserted, namely:—

"(e) as to the transfer of appeals to Collectors under section 100B".

11. Nothing in this Act shall confer a right to appeal from any order passed before the coming into force of this Act from which an appeal would not have lain if this Act had not been passed.

Saving of orders passed before Act came into force.

to appeal from any order passed before the coming into force of this Act from

STATEMENT OF OBJECTS AND REASONS.

THE objects of this Bill are (a) to check the growth of an irregular system of appeal which has arisen from an abuse of the powers of applying for a revision of certain orders of the Revenue Courts granted by Act XII of 1881, (b) to enable the Local Government to relieve Commissioners of a portion of their judicial work by empowering them to transfer appeals pending before them to Collectors for disposal, (c) to give a right of appeal in rent-suits decided by a Collector or Assistant Collector of the first class where the rent payable is disputed and determined, and (d) to enable the Board of Revenue to transfer suits, applications or appeals from one subordinate Court to another.

Act XII of 1881 declares that certain orders of Collectors and Assistant Collectors of the first class on applications shall be final, subject to revision by the Commissioner of the Division or by the Board. Applications for revision to these tribunals can be made on a stamp of one rupee, and the consequence is that two appeals, the first to Commissioner, the second to the Board, are virtually granted on payment of a light stamp-duty in cases in which the legislature held that the orders should be final, and that some Commissioners are swamped, and the Board unduly occupied, with judicial work. A large proportion of these applications are rejected, but the careful scrutiny of the petition, and very often the examination of the record of the Court of first instance which must precede an order rejecting the petition, are a fruitless waste of the time of highly paid officials, and the facility and cheapness with which such applications can be presented hold out an encouragement to frivolous appeals. At the same time it is admitted that there is a proportion, though a small one, in these cases where orders passed by the Courts of first instance may call for a remedy. The Bill sweeps away the revisional jurisdiction of Commissioners altogether, but gives in lieu of it a right of appeal on an *ad valorem* stamp. A second appeal is allowed when the Commissioner reverses or modifies the decree of the Court of first instance.

2. The amount of judicial work connected with rent-suits has been increasing year by year, especially in the Benares and Meerut Divisions. It is therefore proposed to give power to Commissioners under the control of the Local Government to transfer for disposal appeals pending in their Courts to Collectors. This is on the analogy of the Bengal Civil Courts Act, which empowers District Judges, subject to the orders of the High Court, to refer civil appeals for disposal to Subordinate Judges.

3. Section 189 of Act XII of 1881 makes the judgments of the Collector of a district and of an Assistant Collector of the first class appealable to the District Judge in certain classes of suits, where the value of the subject-matter exceeds Rs. 100. An exception to this pecuniary limit is admitted in suits where the proprietary title to land is determined. It is now proposed to extend the exception to cases where the rent is disputed and determined. In rent-suits this is frequently the main point of contention, and the decision in a single suit may govern rents in an entire village. It is desirable, therefore, that either party should be able to appeal from an adverse decision on such a point, and that the risk of contradictory decisions of different tribunals should be avoided.

4. Opportunity has also been taken to add a section to the Act empowering the Board of Revenue, on cause shown to its satisfaction, to transfer suits, applications or appeals from one subordinate Court to another. This is in accordance with the power granted to Civil Courts by the Code of Civil Procedure, and the want of such a power in the highest Revenue Court may force an officer to try a case in which he is interested in his executive capacity, such as President of a District or Municipal Board, or Manager for the Court of Wards.

The 19th February, 1886.

J. W. QUINTON.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th February, 1886:—

NO. 4 OF 1886.

A Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

WHEREAS it is expedient to amend the North-Western Provinces Land-Revenue Act, 1873, in manner hereinafter appearing; It is hereby enacted as follows:—

New section inserted after section 11.

1. After section 11 the following section shall be inserted, namely:—

"11A. (1) The Local Government may, from time to time, with the previous sanction of the Governor General in Council,

Appointment, powers and duties of Additional Commissioners.

appoint an Additional Commissioner in a Division.

"(2) An Additional Commissioner shall hold his office during the pleasure of the Local Government.

"(3) An Additional Commissioner shall exercise such powers, and discharge such duties, of the Commissioner of the Division under this Act, or under any other law for the time being in force, as the Local Government may from time to time prescribe, but only in such cases as the Commissioner of the Division may direct.

"(4) This Act and every other law for the time being applicable to the Commissioner of the Division shall apply to the Additional Commissioner when exercising any powers or discharging any duties under sub-section (3), as if he were the Commissioner of the Division."

STATEMENT OF OBJECTS AND REASONS.

THE North-Western Provinces Land-revenue Act contains no provision, such as is found in the Codes of the Lower Provinces of Bengal, Bombay, the Punjab and Central Provinces, authorizing the appointment of Additional Commissioners.

At present the Commissioner of Benares is quite unable to cope with the judicial work pending in his Court, and it is very desirable that the Lieutenant-Governor should have the power, which exists in other provinces, of reinforcing the Commissioner under exceptional circumstances by a substantive, though temporary, measure of direct relief and assistance.

This Bill has been drawn enabling the Local Government, with the previous sanction of the Governor General in Council, to effect this, by appointing an Additional Commissioner and distributing the judicial work between him and the Commissioner of the Division.

The 19th February, 1886.

J. W. QUINTON.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 6, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th February, 1886;—

No. 3 OF 1886.

A Bill to amend the North-Western Provinces Rent Act, 1881.

WHEREAS it is expedient to amend the North-Western Provinces Rent Act, 1881; It is hereby enacted as follows:—

1. This Act may be called the North-Western Provinces Rent Act, 1886; and it shall come into force at once.

2. For the last paragraph of section 95 of the North-Western Provinces Rent Act, 1881, the following shall be substituted, namely:—

“For the purposes of the Court-fees Act, 1870, the amount of fee payable in the cases next hereinafter mentioned shall be computed as follows:—

(i) in applications under clause (c), and in appeals from orders passed on applications under that clause, as in a suit for possession of the land to which the application or appeal relates;

(ii) in applications under clauses (l), (n), (o) and (p), and in appeals from orders passed on applications under clauses (d), (e), (f), (l), (n), (o), (p), (q) and (s), according to the rent of the land to which the application or appeal relates payable for the year next before the date of presenting the application, or, if in any case the fee cannot be so computed, then according to the annual letting value of the land as estimated by the applicant or appellant, as the case may be.

“(iii) in applications under clause (m), and in appeals from orders passed on applications under clauses (j), (m) and (t), according to the amount claimed in the application or in the petition of appeal, as the case may be.”

New sections inserted after section 100 of same Act.

3. After section 100 of the same Act the following sections shall be inserted, namely:—

“100A. The Board may, on cause shown to its satisfaction, transfer any suit, application or appeal, or class of suits, applications or appeals, from any Court of Revenue to any other Court of Revenue competent as regards the nature of the case or class of cases to deal therewith under the provisions of this Act.

“100B. (1) The Commissioner of a Division may, with the sanction of the Local Government, transfer any appeal or class of appeals pending before himself to any Collector of a district within his Division.

“(2) The order passed by a Collector on an appeal transferred to him by the Commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the Commissioner, and not otherwise.

“(3) The Local Government may by order recall any appeal transferred to a Collector under sub-section (1), and refer it for disposal to the Commissioner of the Division by whom it was transferred.”

4. In section 189 of the same Act, after the words “one hundred rupees, or” the following shall be inserted, namely:—

“in which the rent payable by the tenant has been a matter in issue and has been determined, or”.

5. In the same Act the last twelve words of section 196, the last twelve words of clause (a) of both sections 193 and 196, and the last six words of section 197, are repealed.

6. In section 194 of the same Act the word "other" is repealed; and in clause (b), of the same section, for the word and figures "section 99" the words and figures "sections 99 and 100" shall be substituted.

Amendment of section 194 of same Act.

7. For section 195 of the same Act the following shall be substituted, namely:—

"195. The orders of an Assistant Collector of the first class on applications mentioned in section 98 shall be final."

8. In section 198 of the same Act, for the word and figures "section 100" the words and figures "sections 99 and 100" shall be substituted.

Substitution of new section for section 195 of same Act.

9. In section 199 of the same Act, after the words "The Board may" the words "notwithstanding anything hereinbefore contained" shall be inserted.

Section 199 of same Act amended.

10. In section 211, after clause (d) the following shall be inserted, namely:—

"(e) as to the transfer of appeals to Collectors under section 100B".

Addition to section 211 of same Act.

11. Nothing in this Act shall confer a right to appeal from any order passed before the coming into force of this Act from which an appeal would not have lain if this Act had not been passed.

Saving of orders passed before Act came into force.

STATEMENT OF OBJECTS AND REASONS.

THE objects of this Bill are (a) to check the growth of an irregular system of appeal which has arisen from an abuse of the powers of applying for a revision of certain orders of the Revenue Courts granted by Act XII of 1881, (b) to enable the Local Government to relieve Commissioners of a portion of their judicial work by empowering them to transfer appeals pending before them to Collectors for disposal, (c) to give a right of appeal in rent-suits decided by a Collector or Assistant Collector of the first class where the rent payable is disputed and determined, and (d) to enable the Board of Revenue to transfer suits, applications or appeals from one subordinate Court to another.

Act XII of 1881 declares that certain orders of Collectors and Assistant Collectors of the first class on applications shall be final, subject to revision by the Commissioner of the Division or by the Board. Applications for revision to these tribunals can be made on a stamp of one rupee, and the consequence is that two appeals, the first to Commissioner, the second to the Board, are virtually granted on payment of a light stamp-duty in cases in which the legislature held that the orders should be final, and that some Commissioners are swamped, and the Board unduly occupied, with judicial work. A large proportion of these applications are rejected, but the careful scrutiny of the petition, and very often the examination of the record of the Court of first instance which must precede an order rejecting the petition, are a fruitless waste of the time of highly paid officials, and the facility and cheapness with which such applications can be presented hold out an encouragement to frivolous appeals. At the same time it is admitted that there is a proportion, though a small one, in these cases where orders passed by the Courts of first instance may call for a remedy. The Bill sweeps away the revisional jurisdiction of Commissioners altogether, but gives in lieu of it a right of appeal on an *ad valorem* stamp. A second appeal is allowed when the Commissioner reverses or modifies the decree of the Court of first instance.

2. The amount of judicial work connected with rent-suits has been increasing year by year, especially in the Benares and Meerut Divisions. It is therefore proposed to give power to Commissioners under the control of the Local Government to transfer for disposal appeals pending in their Courts to Collectors. This is on the analogy of the Bengal Civil Courts Act, which empowers District Judges, subject to the orders of the High Court, to refer civil appeals for disposal to Subordinate Judges.

3. Section 189 of Act XII of 1881 makes the judgments of the Collector of a district and of an Assistant Collector of the first class appealable to the District Judge in certain classes of suits, where the value of the subject-matter exceeds Rs. 100. An exception to this pecuniary limit is admitted in suits where the proprietary title to land is determined. It is now proposed to extend the exception to cases where the rent is disputed and determined. In rent-suits this is frequently the main point of contention, and the decision in a single suit may govern rents in an entire village. It is desirable, therefore, that either party should be able to appeal from an adverse decision on such a point, and that the risk of contradictory decisions of different tribunals should be avoided.

4. Opportunity has also been taken to add a section to the Act empowering the Board of Revenue, on cause shown to its satisfaction, to transfer suits, applications or appeals from one subordinate Court to another. This is in accordance with the power granted to Civil Courts by the Code of Civil Procedure, and the want of such a power in the highest Revenue Court may force an officer to try a case in which he is interested in his executive capacity, such as President of a District or Municipal Board, or Manager for the Court of Wards.

J. W. QUINTON.

The 19th February, 1886.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th February, 1886:—

NO. 4 OF 1886.

A Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

WHEREAS it is expedient to amend the North-Western Provinces Land-Revenue Act, 1873, in manner hereinafter appearing; It is hereby enacted as follows:—

New section inserted after section 11.

Appointment, powers and duties of Additional Commissioner.

1. After section 11 the following section shall be inserted, namely:—

"11A. (1) The Local Government may, from time to time, with the previous sanction of the Governor General in Council,

appoint an Additional Commissioner in a Division.

"(2) An Additional Commissioner shall hold his office during the pleasure of the Local Government.

"(3) An Additional Commissioner shall exercise such powers, and discharge such duties, of the Commissioner of the Division under this Act, or under any other law for the time being in force, as the Local Government may from time to time prescribe, but only in such cases as the Commissioner of the Division may direct.

"(4) This Act and every other law for the time being applicable to the Commissioner of the Division shall apply to the Additional Commissioner when exercising any powers or discharging any duties under sub-section (3), as if he were the Commissioner of the Division."

STATEMENT OF OBJECTS AND REASONS.

THE North-Western Provinces Land-revenue Act contains no provision, such as is found in the Codes of the Lower Provinces of Bengal, Bombay, the Punjab and Central Provinces, authorizing the appointment of Additional Commissioners.

At present the Commissioner of Benares is quite unable to cope with the judicial work pending in his Court, and it is very desirable that the Lieutenant-Governor should have the power, which exists in other provinces, of reinforcing the Commissioner under exceptional circumstances by a substantive, though temporary, measure of direct relief and assistance.

This Bill has been drawn enabling the Local Government, with the previous sanction of the Governor General in Council, to effect this, by appointing an Additional Commissioner and distributing the judicial work between him and the Commissioner of the Division.

J. W. QUINTON.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

The 19th February, 1886.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 20, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1886, and was referred to a Select Committee :—

No. 5 OF 1886.

THE GUARDIANS AND WARDS BILL, 1886.

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THE SCHEDULE.—ENACTMENTS REPEALED.

A Bill to Consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, local extent and commencement.

1. (1) This Act may be called the Guardians and Wards Act, 1886.

(2) It extends to the whole of British India except the Scheduled Districts; and

(3) It shall come into force on the first day of January, 1887.

(4) Any power conferred by this Act to make rules or issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force.

2. (1) On and from the day on which this Act comes into force, the enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act.

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor General in Council or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be deemed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the

[Act XL, 1858, s. 2, and Act IX, 1861, s. 7.]

Saving of jurisdiction of Courts of Wards and Chartered High Courts.

twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four (*an Act for establishing High Courts of Judicature in India*).

4. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "minor" means a person who has not reached the age of majority according to the law to which he is subject: [Act 1872, s. 1.]

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:

(3) "ward" means a minor for whose person or property, or both, there is a guardian:

(4) "the Court" means the Court having jurisdiction to entertain an application under this Act for the appointment, or declaration of the title, of a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or the High Court to which that Court is subordinate, or, in any matter relating to the person of the ward, the High Court having jurisdiction in the place where the ward for the time being resides:

(5) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, from time to time, by name or by virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(6) "prescribed" means prescribed by rules made by the High Court under this Act.

CHAPTER II.

APPOINTMENT OF GUARDIANS.

5. Where a minor is a person to whom the Indian Succession Act, 1865, applies, a guardian of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing—

(a) if the minor is legitimate, by the father, or by either parent if the other is dead or incapable of acting;

(b) if the minor is illegitimate, by the mother.

6. Where a minor is a person to whom the Indian Succession Act, 1865, does not apply, nothing in this Act shall take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which he is subject.

7. Where it appears to the Court that provision ought to be made—

(a) for appointing a guardian of the person or property, or both, of a minor, or

(b) for declaring the title of a person claiming to be such a guardian, the Court may make an order accordingly.

8. An order may be made under the last foregoing section on the application of—

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

[Act XL, ss. 3 and 4, Act IX, 1861, s. 7, and Act XL, 1858, s. 2.]

*The Guardians and Wards Bill, 1886.**(Chapter II.—Appointment of Guardians.—Sections 9-14.)*

- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local area within which the minor resides or has property, or
- (d) the Collector having authority with respect to the class to which the minor belongs.

9. (1) The application shall be made either to the Court having jurisdiction to entertain the application, or to the High Court having jurisdiction in the place where the minor resides or has property, or to the District Court having jurisdiction in that place.

(2) An application with respect to the guardianship of the person of a minor shall ordinarily be made to the Court having jurisdiction in the place where the minor resides.

(3) If an application with respect to the guardianship of the person or property, or both, of a minor is made to a Court other than that having jurisdiction in the place where the minor resides, the Court may refuse the application if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

10. (1) The application shall be by petition setting forth the grounds of the application, and stating—

- (a) the age and residence of the minor;
- (b) the nature and value of his property (if any);
- (c) where the person or property of the minor is not in the custody or possession of the petitioner, the person (if any) having the custody or possession of the person or property of the minor;
- (d) what relations the minor has, and where they reside;
- (e) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;
- (f) where the application is to appoint a guardian, the qualifications of the proposed guardian and his willingness to act;
- (g) where the application is to declare the title of a guardian, the grounds on which that title rests; and
- (h) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) The petition shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may be received as evidence of the facts stated therein.

11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

- (a) to be served, in the manner directed in the Code of Civil Procedure, on the person (if any) named in the petition as having the custody or being in possession of the person or property of the minor, and on any other person to whom, in the opinion of the Court, special notice of the application should be given; and

- (b) to be posted on some conspicuous part of the court-house, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) When any part of the property described in the petition is of such nature that a Court of Wards could assume the superintendence thereof, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor resides, and on every Collector in whose district any portion of that part of the property is situate, and the Collector may cause the notice to be published in any manner he deems fit.

12. The Court may direct that the person (if any) having the custody of the minor shall produce him at such place and time as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

14. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) Separate guardians may be appointed or declared of the person and of the property of a minor.

(3) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

(4) If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall accept the guardian as duly appointed or declared and give effect to the order appointing or declaring him.

*The Guardians and Wards Bill, 1886.**(Chapter II.—Appointment of Guardians.—Sections 15-17.)**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 18-22.)*[Act XIII,
1874, s. 10.]

15. (1) In appointing or declaring the guardian of a minor the Court shall be guided by the law to which the minor is subject and by what appears to be, consistently with that law, for the best interest of the minor with respect to his mental, moral and temporal welfare.

(2) In considering what will be for the best interest of the minor, the Court shall have regard to his age, his relationship to the proposed guardian, the wishes of a deceased parent (if any), and any existing or previous connection of the proposed guardian with the person or property of the minor.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

X of
1885.

(4) In the case of persons to whom the Indian Succession Act, 1865, applies, as between parents adversely claiming the guardianship, neither parent is entitled to it as of right; but, other things being equal in such case, if the minor is of tender years, he should be given to the mother, and if he is of an age to require education and preparation for labour and business, then to the father.

[New.]

(5) Where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to an appointment or declaration asked for in an application.

(6) The Court shall not appoint a person to be guardian against his will.

[Act XL,
1858, s. 27;
Act XX, 1854,
s. 31; Act
XIII, 1874, s.
25; and Act
XVII, 1885,
s. 8.]

Guardian of the person not to be appointed by the Court in certain cases.

16. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person of a minor—

- (a) who is a married female cohabiting with her husband, or
- (b) whose father is living and is not a minor or, in the opinion of the Court, unfit to perform, or incapable of performing, the duties of a guardian of the person of the minor, or
- (c) whose property is under the superintendence of a Court of Wards competent to appoint a guardian of his person.

[New.]

17. Where under this Chapter the Court appoints or declares a guardian of the property of a minor who is a member of an undivided Hindu family, it shall, except where it is proved to the satisfaction of the Court that the interests of the minor have been actually imperilled, appoint or declare the guardian subject to such restrictions as will prevent him from interfering with the powers of the managing member of the family.

Guardian of property to be appointed by the Court subject to restrictions in case of certain minors.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

Fiduciary relation of guardian to ward.

18. (1) A guardian must act for the benefit of his ward.

[Seton's
Creases, 72
and Act
1874, s.]

(2) He cannot make any profit out of his office.

(3) With respect to the property of the ward, he stands in the position of trustee for the ward, and is responsible for any loss occasioned to the property by his wilful default or gross negligence.

(4) This fiduciary relation extends to and affects purchases by a guardian of the property of his ward immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

Minor incompetent to act.

19. A minor is incompetent to act as guardian.

[Act X
1874, s.]*Guardian of the Person.*

20. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

21. (1) If a ward leaves the custody of his guardian, he may be compelled by order of the Court to return to that custody.

Title of guardian to custody of ward.

[Act I
1874, s.]

(2) But the Court may refuse to make an order for his return to the custody of the guardian if it appears—

- (a) that the ward has been ill-treated by the guardian; or
- (b) that the conduct of the guardian in any other respect has rendered him unfit to have the custody of the ward; or
- (c) that the ward is, on reasonable grounds not inconsistent with the law to which he is subject, unwilling to return, and, having attained to years of discretion, is capable of exercising a wise choice as to the custody in which he will remain.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

[Enam
Domes
Relat
691-5]

22. (1) A guardian of the person appointed or declared by the Court shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such temporary purposes as may be prescribed or for the purpose of placing him beyond those limits at an educational institution appointed by the Local Government administering the territories

Removal of ward from jurisdiction.

[Act I
1874, s.]

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 23-27.)*

within which the Court is established as an institution to which a guardian may send a ward without the leave of the Court.

(2) The leave granted by the Court under subsection (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

II, 15.] **23.** (1) A guardian of the property of a ward must keep that property safely.
Duties of guardian of property.

(2) In the case of immoveable property, he must not suffer any waste, but must maintain the buildings (if any) thereon and their appurtenances out of the rents and profits of the property.

18: Limitation of powers
18: of guardian of property
XIII, appointed or declared by
16.] the Court.
24. Where a guardian of the property of a ward has been appointed or declared by the Court, he shall not, without the previous permission of the Court,—

- (a) borrow for his ward; or
- (b) mortgage, charge or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward; or
- (c) lease any part of that property for a term exceeding three years; or
- (d) transfer any Government securities belonging to the ward, or the shares or other interest of the ward in any company; or
- (e) dispose of any other part of the principal of the property of the ward:

V, 20.] Provided that the Court may, subject to any rules made by the High Court under this Act, exempt a guardian from the necessity of obtaining the permission of the Court under this section, either generally or in special circumstances, and as to either the whole or any specified part of the property of the ward.

25. (1) Permission to the guardian to do any of the acts mentioned in the last foregoing section shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.
Practice with respect to limitation of powers of guardian of property.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to [New.] the permission the following among other conditions, namely:—

- (a) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made by the High Court under this Act, directs;
- (b) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;
- (c) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian to be invested by the Court on prescribed securities or otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian [New.] to do an act mentioned in the last foregoing section the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear, and record the statement of, any person who appears in opposition to the application.

26. (1) Where a guardian of the property of a ward has been appointed or declared by the Court, the Court may from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.
[Act XL, 1858, s. 2: Act XX, 1864, s. 1: and Act XIII, 1874, s. 20.]
General powers of guardian of property.

(2) Subject to any such order and subject also to sections 17 and 24, a guardian appointed by or under a will or other instrument shall, with respect to the property of his ward, have such powers and be subject to such restrictions as are conferred or imposed on him by that instrument.

(3) Subject to the foregoing provisions of this section, a guardian of the property of a ward may do all acts which are reasonable and proper for the realization, protection or benefit of the property of the ward and are allowed by the law to which the ward is subject.
[Act II, 1882, s. 36.]

27. (1) A guardian may apply by petition to the Court for its opinion, advice or direction on any present questions respecting the management or administration of the property of his ward, other than questions not proper, in the opinion of the Court, for summary disposal.
[Act II, 1882, s. 34.]
Right of guardian to apply to the Court for opinion in management of property of ward.

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 28-33.)*

(2) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as guardian in the subject-matter of the application.

[Act XIII,
1874, s. 18.]

28. Where a guardian of the property of a ward has been appointed or declared by the Court, he shall—
Obligations on, and privileges of, guardian of property.

[Act X, 1865,
s. 256, and
Act V, 1881,
s. 78.]

(a) if so required by the Court, give a bond, as nearly may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

[Act XL,
1858, s. 16,
and Act XX
1864, s. 16.]

(b) deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

[Act XL,
1858, s. 16,
and Act XX,
1864, s. 16.]

(c) exhibit his accounts in the Court at such times and in such form as the Court directs;

[Act XL,
1858, s. 17,
and Act XX,
1864, s. 17.]

(d) if the Court so directs, pay into the Court the balance due from him on those accounts, or so much thereof as the Court directs, in the manner in which money is required by any rules for the time being in force to be paid into that Court;

[Act XL,
1858, s. 11 :
Act XX,
1864, s. 10 :
and Act XIII,
1874, s. 17.]

(e) apply for the maintenance, education and advancement of the ward such portion of the income of the property of the ward as the Court directs, and, if the Court so directs, the whole or any part of the principal of that property; and

[Act XL,
1858, s. 24,
and Act XX,
1864, s. 24.]

(f) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

[Act X, 1865,
s. 257, and
Act V, 1881,
s. 79. I. L. R.
6 All. 248.]

29. Where a guardian has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may at any time, on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that the money received be paid into the Court, or otherwise, as the Court thinks fit, assign the bond to some

proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, the full amount recoverable in respect of any breach thereof.

30. Where a guardian has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his legal representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, the full amount found in the suit to have been received by the guardian and not to have been duly accounted for.

31. Nothing in either of the last two foregoing sections shall be construed to deprive a ward or his legal representative of any remedy against his guardian, or the legal representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his legal representative would have against his trustee or the legal representative of the trustee.

Termination of Guardianship.

32. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

33. (1) The Court may, on the application of any person interested, or of its own motion, remove a guardian for any of the following causes, namely:—

- (a) for abuse of his trust;
- (b) for continued failure to perform its duties;
- (c) for incapacity to perform its duties;
- (d) for gross immorality;
- (e) for having an interest adverse to the faithful performance of his duties;
- (f) for removal from the local limits of the jurisdiction of the Court;
- (g) by reason of the arrival within those limits of some person whose guardianship the Court may think likely to be more beneficial to the ward than that of his guardian; or
- (h) in the case of a guardian of the property, for insolvency.

(2) When a guardian has been removed for any such cause, the Court may appoint a successor to him under the provisions of Chapter II.

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 34-35.)**(Chapter IV.—Supplemental Provisions.—Sections 34-41.)*

1858, XX, 23: dian.
XIII, 23
34. (1) If a guardian desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is some other proper person whom it may appoint to be guardian under the provisions of Chapter II, it shall discharge the applicant from the guardianship and appoint the other person in his place.

1858, XX, 31: of guardian.
XIII, 23
35. (1) The power of a guardian of the person ceases—

- (a) by his removal or discharge;
- (b) by the Court of Wards assuming superintendence of the person of the ward;
- (c) by the ward ceasing to be a minor;
- (d) in the case of a female ward, by her marriage followed by cohabitation with her husband; or
- (e) in the case of a ward whose father was a minor, or deemed unfit to perform, or incapable of performing, the duties of a guardian of the person of the ward, by the father ceasing to be a minor or, as the case may be, to be deemed unfit or incapable as aforesaid.

(2) The power of a guardian of the property ceases—

- (a) by his removal or discharge;
- (b) by the Court of Wards assuming superintendence of the property of the ward; or
- (c) by the ward ceasing to be a minor.

(3) When for any cause a person ceases to be a guardian, the Court may require him to deliver as it directs any property in his possession belonging to the ward.

(4) When he has delivered as the Court directs the property, if any, in his possession belonging to the ward, the Court may declare him to be discharged from his liabilities as guardian, save as regards any fraud which may subsequently be discovered.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Orders for regulating conduct or proceedings of guardians, and enforcement of these orders.
36. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian who has not been appointed by a Court of Wards, whether the guardian has been appointed or declared by the Court under this Act or not.

(2) In case of disobedience to an order made under sub-section (1), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of

Civil Procedure, as if the guardian were the defendant and the ward the plaintiff.

37. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, the guardian of the ward removes him from the limits of the jurisdiction of the Court in contravention of the prohibition contained in section 22, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment for a term which may extend to six months, or to both.

38. If a guardian fails to deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, the statement mentioned in clause (b) of section 28, or to exhibit his accounts in the Court, as required by clause (c) of that section, or to pay into the Court the balance due from him on those accounts, as required by clause (d) of that section,

or if a person who has ceased to be a guardian fails, on the requisition of the Court, to deliver as the Court directs any property in his possession belonging to the ward,

he shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding fifty rupees for each day after the first during which the default continues and to detention in the civil jail until he consents to deliver the statement, or exhibit the accounts, or pay the balance, or deliver the property, as the case may be.

39. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act:

Provided that a person shall not be punished twice for the same offence

40. The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

41. An appeal shall lie to the High Court from an order made by a District Court—

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or
- (b) under section 9, sub-section (3), refusing an application; or
- (c) under section 21, making or refusing to make an order for the return of a ward to the custody of his guardian; or

*The Guardians and Wards Bill, 1886.**(Chapter IV.—Supplemental Provisions.—Sections 42-46.)**(The Schedule.—Enactments repealed.)*

- (d) under section 24, refusing to grant permission to the guardian to do an act mentioned in that section; or
- (e) under section 26, sub-section (1), defining, restricting or extending the powers of a guardian; or
- (f) under section 33, sub-section (1), removing a guardian; or
- (g) under section 34, refusing to discharge a guardian; or
- (h) under section 36, regulating the conduct or proceedings of a guardian, or enforcing the order; or
- (i) under section 37 or section 38, imposing a penalty.

[Act IX, 1861, s. 6, and Act XIII, 1874, s. 9.] XIV of 1882. **42.** Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

[Act X, 1865, s. 241, and Act V, 1881, s. 57.] **43.** The High Court may refuse an application made to it under this Act if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

[Act XL, 1858, s. 13, and Act XX, 1864, s. 13.] **44.** The costs of any proceeding under this Act shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is held.

[New c. Act XIII, 1874, s. 8.] **45.** In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules—

- (a) as to the procedure to be followed with respect to applications of guardians for permission to do acts mentioned in section 24;
- (b) as to the security to be required from guardians;
- (c) as to the preservation of statements and accounts delivered and exhibited by guardians;
- (d) as to the inspection of those statements and accounts by persons interested;
- (e) as to the custody of money, and securities for money, belonging to wards;
- (f) as to the securities on which money belonging to wards may be invested;
- (g) as to allowances to be granted to guardians for their care and pains in the execution of their duties; and
- (h) generally, for carrying out the purposes of this Act.

46. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed under Chapter II.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title or subject.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>		
XIV of 1858	Minors (Madras)	The whole.
XL of 1858	Minors (Bengal)	So much as has not been repealed.
XX of 1864	Minors (Bombay)	The whole.
IX of 1861	Minors	The whole.
VII of 1870	Court-fees	Section 19 H, and article 10 of Schedule I.
IV of 1872	Punjab Laws	So far as it relates to Act XL of 1858.
XIX of 1873	North-Western Provinces Land-revenue.	Section 258.
XIII of 1874	European British Minors	The whole.
XV of 1874	Laws Local Extent.	So far as it relates to any enactment repealed by this Act.
XVII of 1875	Burma Courts	Section 96.
XX of 1875	Central Provinces Laws	So far as it relates to Act XL of 1858.
XVIII of 1876	Oudh Laws	So far as it relates to Act XL of 1858.
<i>Madras Regulations.</i>		
V of 1804	Court of Wards	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X of 1831	Minors' Estates	Section 3.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill to consolidate and amend the law relating to Guardian and Ward is based on opinions elicited by a reference to Local Governments and High Courts on the subject of certain defects in the law relating to the guardianship of minors, and its object is to provide a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India.

2. Among the enactments which the Bill will supersede are Act XL of 1858 and portions of the Madras Code, relating to minors in the Presidencies of Bengal and Madras who are not European British subjects and are not under the superintendence of a Court of Wards; Act XX of 1864, relating to minors in the Presidency of Bombay who are not European British subjects; Act IX of 1861, relating to the custody and guardianship of minors who are not European British subjects; and Act XIII of 1874, relating to the guardianship of European British minors in territories beyond the jurisdiction of the chartered High Courts.

3. The Bill, which follows generally the frame of Act XIII of 1874, is drawn as applicable to all District Courts and High Courts (including the chartered High Courts) and to minors of all creeds and races. But it does not take away any of the powers at present possessed by the chartered High Courts, and it provides that, in the selection of guardians and other matters, regard shall be had to the personal law of the minor. The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law.

4. One effect of the assimilation of the law will be to do away with the rule, which obtains in the Presidencies of Bengal and Bombay, that no person shall be entitled to institute or defend any suit connected with a minor's estate of which he claims the charge until he has obtained a certificate of administration. It is proposed that suits by and against minors shall be regulated by Chapter XXXI of the Code of Civil Procedure, and that, in a Bill which is to be introduced to amend that Code, provision be inserted conferring, among other privileges, on a guardian who has been appointed, or whose title has been declared, under the Guardians and Wards law, a preferential right to be appointed next friend or guardian for the suit.

5. The several sections of the Bill which appear to call for remark will now be noticed in consecutive order.

6. *Section 4, clause (1).*—In connection with section 26, Act XL of 1858, section 30, Act XX of 1864, and section 2, Act XIII of 1874, the question arose whether the age of majority should be dealt with in the Bill. As there was no necessity to deal with it, it was considered expedient to avoid the difficulty of doing so by defining "minor," in the terms of section 11 of the Indian Contract Act, 1872, as a person who has not reached the age of majority according to the law to which he is subject.

7. *Section 4, clause (2).*—"Guardian" has been so defined as to mean any person having the care of the person of a minor or of his property, or of both his person and property. The Bill, therefore, relates to guardians generally except where it is expressed to relate to particular classes of guardians.

8. *Section 5.*—This section follows Act XIII of 1874, which, in recognising in certain circumstances the right of a mother to appoint a guardian, was based on the New York Civil Code. The section goes beyond section 47 of the Indian Succession Act and beyond the English law. But under the English law an appointment by a mother is not now wholly ineffectual, and is likely at no distant date to be declared to be valid except in so far as it may interfere with an appointment by the father.

9. *Sections 9 and 43.*—The High Court and District Court will have concurrent jurisdiction, but the High Court may refuse an application with respect to the guardianship of a minor if in its opinion the application would be disposed of more justly or conveniently by a District Court. Where the application is with respect to the guardianship of the person of a minor, it is ordinarily to be made to the Court having jurisdiction in the place where the minor resides, that being the Court which can most effectively discharge the duties incident to the appointment of a guardian to the person of the minor.

10. *Section 11, sub-section (2).*—The sub-section follows an order made by the High Court of Judicature for the North-Western Provinces with a view to facilitating the discharge by Collectors of their duty of ascertaining and reporting to the Court of Wards from time to time what proprietors may come within the description of disqualified landholders.

11. *Section 14, sub-section (4).*—The rule laid down in this sub-section is, as explained by Sir Arthur Hobhouse with respect to the corresponding section in Act XIII of 1874, based solely on grounds of convenience.

12. *Section 15, sub-section (5), and section 17.*—As regards a minor who is a member of an undivided Hindu family, it seems to be generally admitted that it is desirable, as a rule, to leave him to his natural guardians without interference. But such a minor has certain rights in respect of the family property, and those rights are capable of being protected by a guardian. The guardian could not assume the management of the common property, and possibly he would, owing to the constitution of the co-ownership, be debarred from taking directly even a share in the management, and be confined to a mere power of control from without and a right in the last resort to demand a partition. But even this limited authority might in some cases be of great importance.

As regards the view hitherto taken by the Courts on this subject, it has indeed been held by the High Courts at Fort William and Bombay that Acts XL of 1858 and XX of 1864 could not be applied where the minor had no rights except as a member of an undivided Hindu family (I. L. R. 5 Cal. 219 and 3 Bom. 431, and 12 Bo. H. C. Rep. 247). Some doubt has been thrown on this view by the case before the Privy Council reported in I. L. R. 8 Cal. 656 (I. L. R. 6 Bom. 595 and 8 Bom. 396); but in any case it is a view which seems to be based on the peculiar wording of those Acts, which have been construed as contemplating an actual and (perhaps) corporeal taking charge of and management of some tangible property. In other words, these cases merely decide that under the particular Acts a manager cannot be appointed for a minor member of a pure joint family, not that such a manager is a thing inconceivable or impossible (I. L. R. 7 Cal. 369).

As regards the provisions of certain enactments which allow the Court of Wards to take charge only of the estate of a minor who is a sole owner (Act IV, 1872, section 35, Act XVII, 1876, section 161, and Bengal Act IX, 1879, section 7), they are to be accounted for by the fact that these enactments were designed mainly to guard against the risk of loss of revenue from an estate being left without any competent person in charge of it. That it was not considered impossible to take charge of the interest of a minor shareholder is manifest from Madras Regulations V of 1804, section 20, and X of 1831, section 3, and from the circumstance that section 14 of Act XL of 1858 and other similar enactments provide for the Collector taking charge of the share of a co-owner who is still a minor on the estate escaping from the management of the Court of Wards owing to the other co-owners having come of age. The Courts of Wards in the North-Western Provinces (Act XIX of 1873) and Central Provinces (Act XVII of 1885) are not precluded from assuming superintendence of the interest of a disqualified person who is a co-owner in an estate with other persons who are not disqualified.

It may be gathered from the proceedings of the Legislative Council, 1854-55, pages 672 *et seq.*, that it was the intention of the framers of Act XL of 1858 that the Civil Court should appoint guardians for minors owning shares in estates, and it would seem that it is only owing to the peculiar wording of the Act, coupled perhaps with a natural disinclination on the part of the Courts to interfere between joint-owners, that that intention has been defeated.

13. *Section 18.*—This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrima fidei*, not only while it lasts, but even after it has ceased to exist.

14. *Sections 24 and 25.*—These sections are based on section 18 of the Acts of 1858 and 1864 and the corresponding section of the Act of 1874, on certain provisions in the Code of Lower Canada, and on suggestions received for the amendment of the Acts of 1858 and 1864. They provide that a guardian who has been appointed, or whose title has been declared, by the Court, shall not borrow for his ward, or transfer any part of the principal of his property, without the permission of the Court, and that the Court, before granting its permission, shall satisfy itself that the transaction proposed is either necessary or for the evident advantage of the ward, and, when granting the permission, shall itself record an order setting forth the necessity or advantage and the conditions subject to which it permits the loan to be taken or the transfer to be effected (I. L. R. 5 Cal. 363 and 6 Cal. 161).

These sections will be supplemented by rules made by the High Court under section 44.

15. *Section 28, clause (a), and section 29.*—These provisions are suggested by the case reported at I. L. R. 5 All. 248.

16. *Section 32.*—The rule contained in this section follows from guardianship being a trust. Though the right of survivorship is not acknowledged in England in the case of guardians appointed by the Court of Chancery, yet in practice the survivor or survivors will be re-elected by the Court without a reference. In America there is the right of survivorship among guardians appointed by the Court of Chancery.

17. *Section 33.*—A testamentary guardian may be removed under this section.

18. *Section 41.*—The cases reported at 15 W. R. 492 and 22 W. R. 479 have suggested the specification of the orders from which an appeal shall lie.

19. Acts XL of 1858 and XX of 1864 provide, in sections 27 and 31, respectively, that nothing in those Acts shall authorise the appointment of any person other than a female as the guardian of the person of a female. The cases reported at I. L. R. 10 Cal. 15 and 11 Cal. 574, and the remarks at pages 213-14 of Sayyid Amir Ali's *Personal Law of Muhammadans*, seem to render the re-enactment of the provision inexpedient. Section 15 of the Bill specifies the matters by which the Court is to be guided in appointing a guardian, and one of those matters is the law to which the minor is subject.

20. The provision of Act XX of 1864, that the legal heir of a minor, or the person next in succession to his property, may not be appointed guardian of the person of the minor, has not been repeated. It is considered that the appointment of such persons should not be absolutely prohibited. This was the opinion of the Supreme Council when Act XL of 1858 was about to be enacted (Proceedings of Legislative Council, 1858, pages 576-77), and is the opinion of the Hon'ble Mr. M. Melvill.

21. If the Bill becomes law in its present form, article 10 of Schedule I of the Court-fees Act, 1870, which applies only to the Presidencies of Bengal and Bombay, will become obsolete. It has, therefore, been included in the schedule of enactments to be repealed.

22. A table is appended showing how the principal enactments scheduled for repeal have been reproduced in the Bill or otherwise dealt with.

C. P. ILBERT.

The 12th March, 1886.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIV OF 1858:	
Section 1	} Sections 20, 28 (e) and 36 of Bill.
2	
3	
4	
	Section 21 of Bill.
	Sections 41 and 42 of Bill.
ACT XL OF 1858:	
Section 1	Repealed by Act XIV of 1870.
2	Sections 3, 26 and 36 of Bill.
3, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } or defend suits on behalf of minors.	
4	Section 8 of Bill.
5	Section 9 of Bill.
6, paragraph 1	Section 11 (1) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
7	Sections 7 and 8 of Bill.
8	Section 40 of Bill.
Sections 9, 10 and 11, paragraphs 1 and 2	Sections 7 and 14 (2) of Bill.
Section 11, paragraph 3	Section 28 (f) of Bill.
paragraph 4	Section 28 (e) of Bill.
12: when Collector may be directed to take charge of estate. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879.</i>)	Unnecessary. The Court of Wards can act in cases in which management by the Collector is desirable.

Statement showing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—contd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
Act XL of 1858:—contd.	
Section 13	Section 44 of Bill.
14: when Collector may be directed to retain charge of shares and persons of certain minors. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879, and in Central Provinces by Act XVII of 1885.</i>)	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879.</i>)	Unnecessary, as the Bill is framed.
16, paragraph 1	Section 28 (b) of Bill.
paragraph 2	Section 28 (c) of Bill.
paragraph 3	Compare sections 29 and 30 of Bill.
17	Sections 28 (d) and 45 (e) and (f) of Bill.
18, paragraph 1	Section 26 (3) of Bill.
paragraph 2	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21 (<i>Repealed in part in Lower Provinces by Bengal Act IX of 1879.</i>)	Sections 33 and 35 (3) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (3) and (4) of Bill.
24	Sections 28 (f) and 45 (g) of Bill.
25 (<i>Repealed in part in Lower Provinces by Bengal Act IV of 1870, section 86.</i>)	Sections 20, 28 (e) and 36 of Bill.
26	Section 4 (1) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
27, paragraph 1, first sentence	Section 16 of Bill.
second sentence: guardians of females to be themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2	Section 35 (1) (d) and (e) of Bill.
28	Section 41 of Bill.
29, paragraph 1, first sentence	Sections 4 (4) and 9 of Bill.
second sentence	Section 3 of Bill.
paragraph 2 (<i>number and gender</i>)	Not reproduced. See the General Clauses Act, I of 1868.
Act IX of 1861:	
Section 1, first sentence	Sections 7, 8, 9 and 10 of Bill.
second sentence	Section 11 (1) of Bill.
2	Section 12 of Bill.
3	Sections 7, 13 and 44 of Bill.
4: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
5	Section 41 of Bill.
6	Section 42 of Bill.
7	Section 3 of Bill.
8: definition of "Sadr Court"	Not reproduced. See the General Clauses Act, I of 1868.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—contd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864 :	
Section 1	Sections 26 and 36 of Bill.
2, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute or	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } defend suits on behalf of minors.	
3	Section 8 of Bill.
4	Section 9 of Bill.
5, paragraph 1	Section 11 (I) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
6	Sections 7 and 8 of Bill.
7	Section 40 of Bill.
Sections 8, 9 and 10, paragraphs 1 and 2, and proviso.	Sections 7 and 14 (2) of Bill. See paragraph 20 of the Statement of Objects and Reasons.
Section 10, paragraph 3	Section 28 (f) of Bill.
10, paragraph 4	Section 28 (e) of Bill.
11: when Collector may be directed to take charge of estate	Unnecessary, as section 7 is framed.
12	Section 28 (a) of Bill.
13	Section 44 of Bill.
14: procedure when proprietor of estate under Collector's charge comes of age.	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector.	Unnecessary, as the Bill is framed.
16, paragraph 1	Section 28 (b) of Bill.
paragraph 2	Section 28 (c) of Bill.
paragraph 3	Compare sections 29 and 30 of Bill.
17	Sections 28 (d) and 45 (e) and (f) of Bill.
18, paragraph 1	Section 26 (3) of Bill.
paragraph 2	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21	Sections 33 and 35 (3) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (3) and (4) of Bill.
24	Sections 28 (f) and 45 (g) of Bill.
25	Sections 20, 28 (e) and 36 of Bill.
26	} Sections 20, 22 (I) and 36 of Bill.
27	
28	Section 28 (e) of Bill.
29: marriage of minors	Compare sections 20, 24 and 28 (e) of Bill.
30	Section 4 (I) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
31, paragraph 1: as to guardians of married females.	Section 16 of Bill.
paragraph 1: as to guardians of females being themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2: guardianship to cease when husband attains majority.	Section 35 (I) (d).

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the bill or otherwise dealt with—concl'd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864:— <i>cont'd.</i>	
Section 32: saving of Act XXXV of 1858 (<i>Lunatics</i>).	Not reproduced.
33	Section 41 of Bill.
34, paragraph 1	Sections 4 (4) and 9 of Bill.
paragraph 2	Section 3 of Bill.
paragraph 3 (<i>number and gender</i>)	Not reproduced. See the General Clauses Act, 1 of 1868.
ACT XIII OF 1874:	
Section 1 (Formal)	
2 "Minor"	Section 4 (1) of Bill.
"Guardian"	Section 4 (2) of Bill.
"Court"	Sections 4 (4) and 9 of Bill.
3	Section 5 of Bill.
4, paragraph 1	Section 7 of Bill.
paragraph 2	Section 14 (3) of Bill.
paragraph 3	Section 14 (4) of Bill.
5, paragraph 1	Sections 8 and 10 (1) of Bill.
paragraph 2	Section 10 (2) of Bill.
paragraph 3	Section 11 (1) of Bill.
6	Section 12 of Bill.
7	Sections 7, 13 and 44 of Bill.
8, paragraph 1, first and second sentences: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
third sentence	Section 41 of Bill.
paragraph 2 (Forms)	Not reproduced.
paragraph 3	Section 45 of Bill.
9	Section 42 of Bill.
10, clause (a)	Section 15 (1) and (3) of Bill.
clause (b)	Section 15 (4) of Bill.
clause (c)	Section 15 (2) of Bill.
11	} Section 20 of Bill.
12	
13	Section 21 of Bill.
14, paragraph 1	Section 22 (1) of Bill.
paragraph 2	Section 37 of Bill.
15	Section 23 of Bill.
16	Sections 24 and 25 of Bill.
17	Section 28 (e) of Bill.
18, clauses (a) to (d)	Section 28 (a), (c), (d) and (f) of Bill.
18, clause (e)	Section 18 (3) of Bill.
19	Section 19 of Bill.
20	Sections 26 (1) and 36 (1) of Bill.
21	Section 32 of Bill.
22	Section 33 of Bill.
23	Section 34 of Bill.
24	Sections 33 (2) and 34 (2) of Bill.
25, paragraph 1	Section 35 (1) of Bill.
paragraph 2	Section 35 (2) of Bill.
Schedule (Forms)	Not reproduced.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 27, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1886, and was referred to a Select Committee :—

No. 5 of 1886.

THE GUARDIANS AND WARDS BILL, 1886.

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THE SCHEDULE.—ENACTMENTS REPEALED.

A Bill to Consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, local extent and commencement. 1. (1) This Act may be called the Guardians and Wards Act, 1886.

(2) It extends to the whole of British India except the Scheduled Districts; and

(3) It shall come into force on the first day of January, 1887.

(4) Any power conferred by this Act to make rules or issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force.

2. (1) On and from the day on which this Act comes into force, the enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act.

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

XL, s. 2, and X, 1861, 3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor General in Council or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be deemed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the

twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four (*an Act for establishing High Courts of Judicature in India*).

4. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "minor" means a person who has not reached the age of majority according to the law to which he is subject:

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:

(3) "ward" means a minor for whose person or property, or both, there is a guardian:

(4) "the Court" means the Court having jurisdiction to entertain an application under this Act for the appointment, or declaration of the title, of a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or the High Court to which that Court is subordinate, or, in any matter relating to the person of the ward, the High Court having jurisdiction in the place where the ward for the time being resides:

(5) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, from time to time, by name or by virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(6) "prescribed" means prescribed by rules made by the High Court under this Act.

CHAPTER II.

APPOINTMENT OF GUARDIANS.

5. Where a minor is a person to whom the Indian Succession Act, 1865, applies, a guardian of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing—

(a) if the minor is legitimate, by the father, or by either parent if the other is dead or incapable of acting;

(b) if the minor is illegitimate, by the mother.

6. Where a minor is a person to whom the Indian Succession Act, 1865, does not apply, nothing in this Act shall take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which he is subject.

7. Where it appears to the Court that provision ought to be made—

(a) for appointing a guardian of the person or property, or both, of a minor, or

(b) for declaring the title of a person claiming to be such a guardian, the Court may make an order accordingly.

8. An order may be made under the last foregoing section on the application of—

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

*The Guardians and Wards Bill, 1886.**(Chapter II.—Appointment of Guardians.—Sections 9-14.)*

- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local area within which the minor resides or has property, or
- (d) the Collector having authority with respect to the class to which the minor belongs.

9. (1) The application shall be made either to the High Court having jurisdiction in the place where the minor resides or has property, or to the District Court having jurisdiction in that place.

(2) An application with respect to the guardianship of the person of a minor shall ordinarily be made to the Court having jurisdiction in the place where the minor resides.

(3) If an application with respect to the guardianship of the person or property, or both, of a minor is made to a Court other than that having jurisdiction in the place where the minor resides, the Court may refuse the application if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

10. (1) The application shall be by petition setting forth the grounds of the application, and stating—

- (a) the age and residence of the minor;
- (b) the nature and value of his property (if any);
- (c) where the person or property of the minor is not in the custody or possession of the petitioner, the person (if any) having the custody or possession of the person or property of the minor;
- (d) what relations the minor has, and where they reside;
- (e) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;
- (f) where the application is to appoint a guardian, the qualifications of the proposed guardian and his willingness to act;
- (g) where the application is to declare the title of a guardian, the grounds on which that title rests; and
- (h) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) The petition shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may be received as evidence of the facts stated therein.

11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

(a) to be served, in the manner directed in the Code of Civil Procedure, on the person (if any) named in the petition as having the custody or being in possession of the person or property of the minor, and on any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the court-house, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) When any part of the property described in the petition is of such nature that a Court of Wards could assume the superintendence thereof, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor resides, and on every Collector in whose district any portion of that part of the property is situate, and the Collector may cause the notice to be published in any manner he deems fit.

12. The Court may direct that the person (if any) having the custody of the minor shall produce him at such place and time as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

14. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) Separate guardians may be appointed or declared of the person and of the property of a minor.

(3) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

(4) If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall accept the guardian as duly appointed or declared and give effect to the order appointing or declaring him.

*The Guardians and Wards Bill, 1886.**(Chapter II.—Appointment of Guardians.—Sections 15-17.)**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 18-22.)*[Act XIII,
1874, s. 10.]

15. (7) In appointing or declaring the guardian of a minor the Court shall be guided by the law to which the minor is subject and by what appears to be, consistently with that law, for the best interest of the minor with respect to his mental, moral and temporal welfare.

(2) In considering what will be for the best interest of the minor, the Court shall have regard to his age, his relationship to the proposed guardian, the wishes of a deceased parent (if any), and any existing or previous connection of the proposed guardian with the person or property of the minor.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

X of
1885.

(4) In the case of persons to whom the Indian Succession Act, 1865, applies, as between parents adversely claiming the guardianship, neither parent is entitled to it as of right; but, other things being equal in such case, if the minor is of tender years, he should be given to the mother, and if he is of an age to require education and preparation for labour and business, then to the father.

[New.]

(5) Where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to an appointment or declaration asked for in an application.

(6) The Court shall not appoint a person to be guardian against his will.

[Act XL,
1858, s. 27;
Act XX, 1864,
s. 31; Act
XIII, 1874, s.
25; and Act
XVII, 1885,
s. 8.]

16. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person of a minor—

- (a) who is a married female cohabiting with her husband, or
- (b) whose father is living and is not a minor or, in the opinion of the Court, unfit to perform, or incapable of performing, the duties of a guardian of the person of the minor, or
- (c) whose property is under the superintendence of a Court of Wards competent to appoint a guardian of his person.

[New.]

17. Where under this Chapter the Court appoints or declares a guardian of the property of a minor who is a member of an undivided Hindu family, it shall, except where it is proved to the satisfaction of the Court that the interests of the minor have been actually imperilled, appoint or declare the guardian subject to such restrictions as will prevent him from interfering with the powers of the managing member of the family.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

Fiduciary relation of guardian to ward. 18. (1) A guardian must act for the benefit of his ward.

(2) He cannot make any profit out of his office.

(3) With respect to the property of the ward, he stands in the position of trustee for the ward, and is responsible for any loss occasioned to the property by his wilful default or gross negligence.

(4) This fiduciary relation extends to and affects purchases by a guardian of the property of his ward immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

Minor incompetent to act. 19. A minor is incompetent to act as guardian.

Guardian of the Person.

20. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

21. (1) If a ward leaves the custody of his guardian, he may be compelled by order of the Court to return to that custody.

(2) But the Court may refuse to make an order for his return to the custody of the guardian if it appears—

- (a) that the ward has been ill-treated by the guardian; or
- (b) that the conduct of the guardian in any other respect has rendered him unfit to have the custody of the ward; or
- (c) that the ward is, on reasonable grounds not inconsistent with the law to which he is subject, unwilling to return, and, having attained to years of discretion, is capable of exercising a wise choice as to the custody in which he will remain.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

22. (1) A guardian of the person appointed or declared by the Court shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such temporary purposes as may be prescribed or for the purpose of placing him beyond those limits at an educational institution appointed by the Local Government administering the territories

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 23-27.)*

within which the Court is established as an institution to which a guardian may send a ward without the leave of the Court.

(2) The leave granted by the Court under subsection (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

II. 23. (1) A guardian of the property of a ward
15.] Duties of guardian of must keep that property property. safely.

(2) In the case of immoveable property, he must not suffer any waste, but must maintain the buildings (if any) thereon and their appurtenances out of the rents and profits of the property.

18. 24. Where a guardian of the property of a
16.] ward has been appointed or declared by the Court, he shall not, without the previous permission of the Court,—
Limitation of powers of guardian of property appointed or declared by the Court.

- (a) borrow for his ward; or
- (b) mortgage, charge or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward; or
- (c) lease any part of that property for a term exceeding three years; or
- (d) transfer any Government securities belonging to the ward, or the shares or other interest of the ward in any company; or
- (e) dispose of any other part of the principal of the property of the ward:

V. 90.] Provided that the Court may, subject to any rules made by the High Court under this Act, exempt a guardian from the necessity of obtaining the permission of the Court under this section, either generally or in special circumstances, and as to either the whole or any specified part of the property of the ward.

25. (1) Permission to the guardian to do any
Practice with respect of the acts mentioned in to limitation of powers the last foregoing section of guardian of property. shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall reite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to [New.] the permission the following among other conditions, namely:—

(a) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made by the High Court under this Act, directs;

(b) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(c) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian to be invested by the Court on prescribed securities or otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian [New.] to do an act mentioned in the last foregoing section the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear, and record the statement of, any person who appears in opposition to the application.

26. (1) Where a guardian of the property of a [Act XL, 1858, s. 2: Act XX, 1861, s. 1: and Act XIII, 1874, s. 20.] ward has been appointed or declared by the Court, the Court may from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

(2) Subject to any such order and subject also to sections 17 and 24, a guardian appointed by or under a will or other instrument shall, with respect to the property of his ward, have such powers and be subject to such restrictions as are conferred or imposed on him by that instrument.

(3) Subject to the foregoing provisions of this [Act II, 1882, s. 36.] section, a guardian of the property of a ward may do all acts which are reasonable and proper for the realization, protection or benefit of the property of the ward and are allowed by the law to which the ward is subject.

27. (1) A guardian may apply by petition to [Act II, 1882, s. 34.] the Court for its opinion, advice or direction on any present questions respecting the management or administration of the property of his ward, other than questions not proper, in the opinion of the Court, for summary disposal.

Right of guardian to apply to the Court for opinion in management of property of ward.

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 28-33.)*

(2) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as guardian in the subject-matter of the application.

[Act XIII,
1874, s. 18.]

28. Where a guardian of the property of a ward has been appointed or declared by the Court, he shall—

[Act X, 1865,
s. 256, and
Act V, 1881,
s. 78.]

(a) if so required by the Court, give a bond, as nearly may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

[Act XL,
1858, s. 16,
and Act XX
1864, s. 16.]

(b) deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

[Act XL,
1858, s. 16,
and Act XX,
1864, s. 16.]

(c) exhibit his accounts in the Court at such times and in such form as the Court directs;

[Act XL,
1858, s. 17,
and Act XX,
1864, s. 17.]

(d) if the Court so directs, pay into the Court the balance due from him on those accounts, or so much thereof as the Court directs, in the manner in which money is required by any rules for the time being in force to be paid into that Court;

[Act XL,
1858, s. 11:
Act XX,
1864, s. 10:
and Act XIII,
1874, s. 17.]

(e) apply for the maintenance, education and advancement of the ward such portion of the income of the property of the ward as the Court directs, and, if the Court so directs, the whole or any part of the principal of that property; and

[Act XL,
1858, s. 24,
and Act XX,
1864, s. 24.]

(f) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

[Act X, 1865,
s. 257, and
Act V, 1881,
s. 79. I. L. R.
5 All. 248.]

29. Where a guardian has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may at any time, on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that the money received be paid into the Court, or otherwise, as the Court thinks fit, assign the bond to some

proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, the full amount recoverable in respect of any breach thereof.

30. Where a guardian has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his legal representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, the full amount found in the suit to have been received by the guardian and not to have been duly accounted for.

31. Nothing in either of the last two foregoing sections shall be construed to deprive a ward or his legal representative of any remedy against his guardian, or the legal representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his legal representative would have against his trustee or the legal representative of the trustee.

Termination of Guardianship.

32. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

33. (1) The Court may, on the application of any person interested, or of its own motion, remove a guardian for any of the following causes, namely:—

- (a) for abuse of his trust;
- (b) for continued failure to perform its duties;
- (c) for incapacity to perform its duties;
- (d) for gross immorality;
- (e) for having an interest adverse to the faithful performance of his duties;
- (f) for removal from the local limits of the jurisdiction of the Court;
- (g) by reason of the arrival within those limits of some person whose guardianship the Court may think likely to be more beneficial to the ward than that of his guardian; or
- (h) in the case of a guardian of the property, for insolvency.

(2) When a guardian has been removed for any such cause, the Court may appoint a successor to him under the provisions of Chapter II.

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 34-25.)**(Chapter IV.—Supplemental Provisions.—Sections 34-41.)*

1858, Act XX, s. 23; XIII, ss. 23.] **34. (1)** If a guardian desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is some other proper person whom it may appoint to be guardian under the provisions of Chapter II, it shall discharge the applicant from the guardianship and appoint the other person in his place.

1858, Act XX, s. 31; XIII, ss. 25.] **35. (1)** The power of a guardian of the person ceases—

- (a) by his removal or discharge;
- (b) by the Court of Wards assuming superintendence of the person of the ward;
- (c) by the ward ceasing to be a minor;
- (d) in the case of a female ward, by her marriage followed by cohabitation with her husband; or
- (e) in the case of a ward whose father was a minor, or deemed unfit to perform, or incapable of performing, the duties of a guardian of the person of the ward, by the father ceasing to be a minor or, as the case may be, to be deemed unfit or incapable as aforesaid.

(2) The power of a guardian of the property ceases—

- (a) by his removal or discharge;
- (b) by the Court of Wards assuming superintendence of the property of the ward; or
- (c) by the ward ceasing to be a minor.

21, XX, 21.] (3) When for any cause a person ceases to be a guardian, the Court may require him to deliver as it directs any property in his possession belonging to the ward.

23, XX, 23.] (4) When he has delivered as the Court directs the property, if any, in his possession belonging to the ward, the Court may declare him to be discharged from his liabilities as guardian, save as regards any fraud which may subsequently be discovered.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Act s. 111, conduct or proceedings of guardians, and enforcement of these orders. **36. (1)** The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian who has not been appointed by a Court of Wards, whether the guardian has been appointed or declared by the Court under this Act or not.

(2) In case of disobedience to an order made under sub-section (1), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of

Civil Procedure, as if the guardian were the defendant and the ward the plaintiff.

37. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, the guardian of the ward removes him from the limits of the jurisdiction of the Court in contravention of the prohibition contained in section 22, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment for a term which may extend to six months, or to both. [Act XIII, 1874, s. 14.]

38. If a guardian fails to deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, the statement mentioned in clause (b) of section 28, or to exhibit his accounts in the Court, as required by clause (c) of that section, or to pay into the Court the balance due from him on those accounts, as required by clause (d) of that section, or if a person who has ceased to be a guardian fails, on the requisition of the Court, to deliver as the Court directs any property in his possession belonging to the ward, [Act XL, 1858, s. 22, and Act XX, 1864, s. 22.]

he shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding fifty rupees for each day after the first during which the default continues and to detention in the civil jail until he consents to deliver the statement, or exhibit the accounts, or pay the balance, or deliver the property, as the case may be.

39. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act: [Act V, 1886, s. 14.]

Provided that a person shall not be punished twice for the same offence

40. The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence. [Act XL, 1858, ss. 6 and 8, and Act XX, 1864, ss. 5 and 7.]

41. An appeal shall lie to the High Court from an order made by a District Court— [Act XL, 1858, s. 28; Act XX, 1864, s. 33; and Act IX, 1861, s. 5.]

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or
- (b) under section 9, sub-section (3), refusing an application; or
- (c) under section 21, making or refusing to make an order for the return of a ward to the custody of his guardian; or

*The Guardians and Wards Bill, 1886.**(Chapter IV.—Supplemental Provisions.—Sections 42-46.)**(The Schedule.—Enactments repealed.)*

- (d) under section 24, refusing to grant permission to the guardian to do an act mentioned in that section; or
- (e) under section 26, sub-section (1), defining, restricting, or extending the powers of a guardian; or
- (f) under section 33, sub-section (1), removing a guardian; or
- (g) under section 34, refusing to discharge a guardian; or
- (h) under section 36, regulating the conduct or proceedings of a guardian, or enforcing the order; or
- (i) under section 37 or section 38, imposing a penalty.

[Act IX, 1861,
s. 6, and Act
XIII, 1874,
s. 9.]
XIV of 1882.

42. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

[Act X, 1865,
s. 241, and
Act V, 1881,
s. 57.]

43. The High Court may refuse an application made to it under this Act if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

[Act XL,
1858, s. 13,
and Act XX,
1864, s. 13.]

44. The costs of any proceeding under this Act shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is held.

[New of Act
XIII, 1874,
s. 8.]

45. In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules—

- (a) as to the procedure to be followed with respect to applications of guardians for permission to do acts mentioned in section 24;
- (b) as to the security to be required from guardians;
- (c) as to the preservation of statements and accounts delivered and exhibited by guardians;
- (d) as to the inspection of those statements and accounts by persons interested;
- (e) as to the custody of money, and securities for money, belonging to wards;
- (f) as to the securities on which money belonging to wards may be invested;
- (g) as to allowances to be granted to guardians for their care and pains in the execution of their duties; and
- (h) generally, for carrying out the purposes of this Act.

46. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed under Chapter II.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title or subject.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>		
XIV of 1858	Minors (Madras)	The whole.
XL of 1858	Minors (Bengal)	So much as has not been repealed.
XX of 1864	Minors (Bombay)	The whole.
IX of 1861	Minors	The whole.
VII of 1870	Court-fees	Section 19 H, and article 10 of Schedule I.
IV of 1872	Punjab Laws	So far as it relates to Act XL of 1858.
XIX of 1873	North-Western Provinces Land-revenue.	Section 258.
XIII of 1874	European British Minors	The whole.
XV of 1874	Laws Local Extent.	So far as it relates to any enactment repealed by this Act.
XVII of 1875	Burma Courts	Section 96.
XX of 1875	Central Provinces Laws	So far as it relates to Act XL of 1858.
XVIII of 1876	Oudh Laws	So far as it relates to Act XL of 1858.
<i>Madras Regulations.</i>		
V of 1804	Court of Wards	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X of 1831	Minors' Estates	Section 3.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill to consolidate and amend the law relating to Guardian and Ward is based on opinions elicited by a reference to Local Governments and High Courts on the subject of certain defects in the law relating to the guardianship of minors, and its object is to provide a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India.

2. Among the enactments which the Bill will supersede are Act XL of 1858 and portions of the Madras Code, relating to minors in the Presidencies of Bengal and Madras who are not European British subjects and are not under the superintendence of a Court of Wards; Act XX of 1864, relating to minors in the Presidency of Bombay who are not European British subjects; Act IX of 1861, relating to the custody and guardianship of minors who are not European British subjects; and Act XIII of 1874, relating to the guardianship of European British minors in territories beyond the jurisdiction of the chartered High Courts.

3. The Bill, which follows generally the frame of Act XIII of 1874, is drawn as applicable to all District Courts and High Courts (including the chartered High Courts) and to minors of all creeds and races. But it does not take away any of the powers at present possessed by the chartered High Courts, and it provides that, in the selection of guardians and other matters, regard shall be had to the personal law of the minor. The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law.

4. One effect of the assimilation of the law will be to do away with the rule, which obtains in the Presidencies of Bengal and Bombay, that no person shall be entitled to institute or defend any suit connected with a minor's estate of which he claims the charge until he has obtained a certificate of administration. It is proposed that suits by and against minors shall be regulated by Chapter XXXI of the Code of Civil Procedure, and that, in a Bill which is to be introduced to amend that Code, provision be inserted conferring, among other privileges, on a guardian who has been appointed, or whose title has been declared, under the Guardians and Wards law, a preferential right to be appointed next friend or guardian for the suit.

5. The several sections of the Bill which appear to call for remark will now be noticed in consecutive order.

6. *Section 4, clause (1).*—In connection with section 26, Act XL of 1858, section 30, Act XX of 1864, and section 2, Act XIII of 1874, the question arose whether the age of majority should be dealt with in the Bill. As there was no necessity to deal with it, it was considered expedient to avoid the difficulty of doing so by defining "minor," in the terms of section 11 of the Indian Contract Act, 1872, as a person who has not reached the age of majority according to the law to which he is subject.

7. *Section 4, clause (2).*—"Guardian" has been so defined as to mean any person having the care of the person of a minor or of his property, or of both his person and property. The Bill, therefore, relates to guardians generally except where it is expressed to relate to particular classes of guardians.

8. *Section 5.*—This section follows Act XIII of 1874, which, in recognising in certain circumstances the right of a mother to appoint a guardian, was based on the New York Civil Code. The section goes beyond section 47 of the Indian Succession Act and beyond the English law. But under the English law an appointment by a mother is not now wholly ineffectual, and is likely at no distant date to be declared to be valid except in so far as it may interfere with an appointment by the father.

9. *Sections 9 and 43.*—The High Court and District Court will have concurrent jurisdiction, but the High Court may refuse an application with respect to the guardianship of a minor if in its opinion the application would be disposed of more justly or conveniently by a District Court. Where the application is with respect to the guardianship of the person of a minor, it is ordinarily to be made to the Court having jurisdiction in the place where the minor resides, that being the Court which can most effectively discharge the duties incident to the appointment of a guardian to the person of the minor.

10. *Section 11, sub-section (2).*—The sub-section follows an order made by the High Court of Judicature for the North-Western Provinces with a view to facilitating the discharge by Collectors of their duty of ascertaining and reporting to the Court of Wards from time to time what proprietors may come within the description of disqualified landholders.

11. *Section 14, sub-section (4).*—The rule laid down in this sub-section is, as explained by Sir Arthur Hobhouse with respect to the corresponding section in Act XIII of 1874, based solely on grounds of convenience.

12. *Section 15, sub-section (5), and section 17.*—As regards a minor who is a member of an undivided Hindu family, it seems to be generally admitted that it is desirable, as a rule, to leave him to his natural guardians without interference. But such a minor has certain rights in respect of the family property, and those rights are capable of being protected by a guardian. The guardian could not assume the management of the common property, and possibly he would, owing to the constitution of the co-ownership, be debarred from taking directly even a share in the management, and be confined to a mere power of control from without and a right in the last resort to demand a partition. But even this limited authority might in some cases be of great importance.

As regards the view hitherto taken by the Courts on this subject, it has indeed been held by the High Courts at Fort William and Bombay that Acts XL of 1858 and XX of 1864 could not be applied where the minor had no rights except as a member of an undivided Hindu family (I. L. R. 5 Cal. 219 and 3 Bom. 431, and 12 Bo. H. C. Rep. 247). Some doubt has been thrown on this view by the case before the Privy Council reported in I. L. R. 8 Cal. 656 (I. L. R. 6 Bom. 595 and 8 Bom. 396); but in any case it is a view which seems to be based on the peculiar wording of those Acts, which have been construed as contemplating an actual and (perhaps) corporeal taking charge of and management of some tangible property. In other words, these cases merely decide that under the particular Acts a manager cannot be appointed for a minor member of a pure joint family, not that such a manager is a thing inconceivable or impossible (I. L. R. 7 Cal. 369).

As regards the provisions of certain enactments which allow the Court of Wards to take charge only of the estate of a minor who is a sole owner (Act IV, 1872, section 35, Act XVII, 1876, section 161, and Bengal Act IX, 1879, section 7), they are to be accounted for by the fact that these enactments were designed mainly to guard against the risk of loss of revenue from an estate being left without any competent person in charge of it. That it was not considered impossible to take charge of the interest of a minor shareholder is manifest from Madras Regulations V of 1804, section 20, and X of 1831, section 3, and from the circumstance that section 14 of Act XL of 1858 and other similar enactments provide for the Collector taking charge of the share of a co-owner who is still a minor on the estate escaping from the management of the Court of Wards owing to the other co-owners having come of age. The Courts of Wards in the North-Western Provinces (Act XIX of 1873) and Central Provinces (Act XVII of 1885) are not precluded from assuming superintendence of the interest of a disqualified person who is a co-owner in an estate with other persons who are not disqualified.

It may be gathered from the proceedings of the Legislative Council, 1854-55, pages 672 *et seq.*, that it was the intention of the framers of Act XL of 1858 that the Civil Court should appoint guardians for minors owning shares in estates, and it would seem that it is only owing to the peculiar wording of the Act, coupled perhaps with a natural disinclination on the part of the Courts to interfere between joint-owners, that that intention has been defeated.

13. *Section 18.*—This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrimæ fidei*, not only while it lasts, but even after it has ceased to exist.

14. *Sections 24 and 25.*—These sections are based on section 18 of the Acts of 1858 and 1864 and the corresponding section of the Act of 1874, on certain provisions in the Code of Lower Canada, and on suggestions received for the amendment of the Acts of 1858 and 1864. They provide that a guardian who has been appointed, or whose title has been declared, by the Court, shall not borrow for his ward, or transfer any part of the principal of his property, without the permission of the Court, and that the Court, before granting its permission, shall satisfy itself that the transaction proposed is either necessary or for the evident advantage of the ward, and, when granting the permission, shall itself record an order setting forth the necessity or advantage and the conditions subject to which it permits the loan to be taken or the transfer to be effected (I. L. R. 5 Cal. 363 and 6 Cal. 161).

These sections will be supplemented by rules made by the High Court under section 44.

15. *Section 28, clause (a), and section 29.*—These provisions are suggested by the case reported at I. L. R. 5 All. 248.

16. *Section 32.*—The rule contained in this section follows from guardianship being a trust. Though the right of survivorship is not acknowledged in England in the case of guardians appointed by the Court of Chancery, yet in practice the survivor or survivors will be re-elected by the Court without a reference. In America there is the right of survivorship among guardians appointed by the Court of Chancery.

17. *Section 33.*—A testamentary guardian may be removed under this section.

18. *Section 41.*—The cases reported at 15 W. R. 492 and 22 W. R. 479 have suggested the specification of the orders from which an appeal shall lie.

19. Acts XL of 1858 and XX of 1864 provide, in sections 27 and 31, respectively, that nothing in those Acts shall authorise the appointment of any person other than a female as the guardian of the person of a female. The cases reported at I. L. R. 10 Cal. 15 and 11 Cal. 574, and the remarks at pages 213-14 of Sayyid Amir Ali's *Personal Law of Muhammadans*, seem to render the re-enactment of the provision inexpedient. Section 15 of the Bill specifies the matters by which the Court is to be guided in appointing a guardian, and one of those matters is the law to which the minor is subject.

20. The provision of Act XX of 1864, that the legal heir of a minor, or the person next in succession to his property, may not be appointed guardian of the person of the minor, has not been repeated. It is considered that the appointment of such persons should not be absolutely prohibited. This was the opinion of the Supreme Council when Act XL of 1858 was about to be enacted (Proceedings of Legislative Council, 1858, pages 576-77), and is the opinion of the Hon'ble Mr. M. Melvill.

21. If the Bill becomes law in its present form, article 10 of Schedule I of the Court-fees Act, 1870, which applies only to the Presidencies of Bengal and Bombay, will become obsolete. It has, therefore, been included in the schedule of enactments to be repealed.

22. A table is appended showing how the principal enactments scheduled for repeal have been reproduced in the Bill or otherwise dealt with.

The 12th March, 1886.

C. P. ILBERT.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIV OF 1858:	
Section 1	} Sections 20, 28 (e) and 36 of Bill.
2	
3	
4	
	Section 21 of Bill.
	Sections 41 and 42 of Bill.
ACT XL OF 1858:	
Section 1	Repealed by Act XIV of 1870.
2	Sections 3, 26 and 36 of Bill.
3, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute	Left to be dealt with in the Bill to amend
proviso } or defend suits on	
	behalf of minors. See paragraph 4 of Statement of Objects and Reasons.
4	Section 8 of Bill.
5	Section 9 of Bill.
6, paragraph 1	Section 11 (1) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
7	Sections 7 and 8 of Bill.
8	Section 40 of Bill.
Sections 9, 10 and 11, paragraphs 1 and 2	Sections 7 and 14 (2) of Bill.
Section 11, paragraph 3	Section 28 (f) of Bill.
paragraph 4	Section 28 (e) of Bill.
12: when Collector may be directed to take charge of estate. (Repealed in Lower Provinces by Bengal Act IX of 1879.)	Unnecessary. The Court of Wards can act in cases in which management by the Collector is desirable.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—contd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XL OF 1858:—contd.	
Section 13	Section 44 of Bill.
14: when Collector may be directed to retain charge of shares and persons of certain minors. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879, and in Central Provinces by Act XVII of 1885.</i>)	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879.</i>)	Unnecessary, as the Bill is framed.
16, paragraph 1	Section 28 (b) of Bill.
paragraph 2	Section 28 (c) of Bill.
paragraph 3	Compare sections 29 and 30 of Bill.
17	Sections 28 (d) and 45 (e) and (f) of Bill.
18, paragraph 1	Section 26 (3) of Bill.
paragraph 2	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21 (<i>Repealed in part in Lower Provinces by Bengal Act IX of 1879.</i>)	Sections 33 and 35 (3) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (3) and (4) of Bill.
24	Sections 28 (f) and 45 (g) of Bill.
25 (<i>Repealed in part in Lower Provinces by Bengal Act IV of 1870, section 86.</i>)	Sections 20, 28 (e) and 36 of Bill.
26	Section 4 (1) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
27, paragraph 1, first sentence.	Section 16 of Bill.
second sentence: guardians of females to be themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2	Section 35 (1) (d) and (e) of Bill.
28	Section 41 of Bill.
29, paragraph 1, first sentence	Sections 4 (4) and 9 of Bill.
second sentence	Section 3 of Bill.
paragraph 2 (<i>number and gender</i>)	Not reproduced. See the General Clauses Act, I of 1868.
ACT IX OF 1861:	
Section 1, first sentence	Sections 7, 8, 9 and 10 of Bill.
second sentence	Section 11 (1) of Bill.
2	Section 12 of Bill.
3	Sections 7, 13 and 44 of Bill.
4: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
5	Section 41 of Bill.
6	Section 42 of Bill.
7	Section 3 of Bill.
8: definition of "Sadr Court"	Not reproduced. See the General Clauses Act, I of 1868.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—contd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864:	
Section 1	Sections 26 and 36 of Bill.
2, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute or	Left to be dealt with in the Bill to amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } defend suits on behalf of minors.	
3	Section 8 of Bill.
4	Section 9 of Bill.
5, paragraph 1	Section 11 (I) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
6	Sections 7 and 8 of Bill.
7	Section 40 of Bill.
Sections 8, 9 and 10, paragraphs 1 and 2, and proviso.	Sections 7 and 14 (2) of Bill. See paragraph 20 of the Statement of Objects and Reasons.
Section 10, paragraph 3	Section 28 (f) of Bill.
10, paragraph 4	Section 28 (e) of Bill.
11: when Collector may be directed to take charge of estate	Unnecessary, as section 7 is framed.
12	Section 28 (a) of Bill.
13	Section 44 of Bill.
14: procedure when proprietor of estate under Collector's charge comes of age.	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector.	Unnecessary, as the Bill is framed.
16, paragraph 1	Section 28 (b) of Bill.
paragraph 2	Section 28 (c) of Bill.
paragraph 3	Compare sections 29 and 30 of Bill.
17	Sections 28 (d) and 45 (e) and (f) of Bill.
18, paragraph 1	Section 26 (3) of Bill.
paragraph 2	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21	Sections 33 and 35 (3) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (3) and (4) of Bill.
24	Sections 28 (f) and 45 (g) of Bill.
25	Sections 20, 28 (e) and 36 of Bill.
26	} Sections 20, 22 (I) and 36 of Bill.
27	
28	Section 28 (e) of Bill.
29: marriage of minors	Compare sections 20, 24 and 28 (e) of Bill.
30	Section 4 (I) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
31, paragraph 1: as to guardians of married females.	Section 16 of Bill.
paragraph 1: as to guardians of females being themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2: guardianship to cease when husband attains majority.	Section 35 (I) (d).

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—concl'd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864:— <i>cont'd.</i>	
Section 32: saving of Act XXXV of 1858 (<i>Lunatics</i>).	Not reproduced.
33	Section 41 of Bill.
34, paragraph 1	Sections 4 (4) and 9 of Bill.
paragraph 2	Section 3 of Bill.
paragraph 3 (<i>number and gender</i>)	Not reproduced. See the General Clauses Act, I of 1868.
ACT XIII OF 1874:	
Section 1 (Formal)	
2 "Minor"	Section 4 (1) of Bill.
"Guardian"	Section 4 (2) of Bill.
"Court"	Sections 4 (4) and 9 of Bill.
3	Section 5 of Bill.
4, paragraph 1	Section 7 of Bill.
paragraph 2	Section 14 (3) of Bill.
paragraph 3	Section 14 (4) of Bill.
5, paragraph 1	Sections 8 and 10 (1) of Bill.
paragraph 2	Section 10 (2) of Bill.
paragraph 3	Section 11 (1) of Bill.
6	Section 12 of Bill.
7	Sections 7, 13 and 44 of Bill.
8, paragraph 1, first and second sentences: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
third sentence	Section 41 of Bill.
paragraph 2 (Forms)	Not reproduced.
paragraph 3	Section 45 of Bill.
9	Section 42 of Bill.
10, clause (a)	Section 15 (1) and (3) of Bill.
clause (b)	Section 15 (4) of Bill.
clause (c)	Section 15 (2) of Bill.
11	} Section 20 of Bill.
12	
13	Section 21 of Bill.
14, paragraph 1	Section 22 (1) of Bill.
paragraph 2	Section 37 of Bill.
15	Section 23 of Bill.
16	Sections 24 and 25 of Bill.
17	Section 28 (e) of Bill.
18, clauses (a) to (d)	Section 28 (a), (c), (d) and (f) of Bill.
18, clause (e)	Section 18 (3) of Bill.
19	Section 19 of Bill.
20	Sections 26 (1) and 36 (1) of Bill.
21	Section 32 of Bill.
22	Section 33 of Bill.
23	Section 34 of Bill.
24	Sections 33 (2) and 34 (2) of Bill.
25, paragraph 1	Section 35 (1) of Bill.
paragraph 2	Section 35 (2) of Bill.
Schedule (Forms)	Not reproduced.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India.



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CALCUTTA, SATURDAY, APRIL 3, 1886.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1886, and was referred to a Select Committee :—

No. 5 OF 1886.

THE GUARDIANS AND WARDS BILL, 1886.

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THE SCHEDULE.—ENACTMENTS REPEALED.

A Bill to Consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, local extent and commencement.

1. (1) This Act may be called the Guardians and Wards Act, 1886.

(2) It extends to the whole of British India except the Scheduled Districts; and

(3) It shall come into force on the first day of January, 1887.

(4) Any power conferred by this Act to make rules or issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force.

2. (1) On and from the day on which this Act comes into force, the enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act.

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

[Act XL, 1858, s. 2, and Act IX, 1861, s. 7.]

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards and Chartered High Courts. Court of Wards by the Governor General in Council or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be deemed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the

twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four (*an Act for establishing High Courts of Judicature in India*).

4. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "minor" means a person who has not reached the age of majority according to the law to which he is subject:

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:

(3) "ward" means a minor for whose person or property, or both, there is a guardian:

(4) "the Court" means the Court having jurisdiction to entertain an application under this Act for the appointment, or declaration of the title, of a guardian; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or the High Court to which that Court is subordinate, or, in any matter relating to the person of the ward, the High Court having jurisdiction in the place where the ward for the time being resides:

(5) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, from time to time, by name or by virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(6) "prescribed" means prescribed by rules made by the High Court under this Act.

CHAPTER II.

APPOINTMENT OF GUARDIANS.

5. Where a minor is a person to whom the Indian Succession Act, 1865, applies, a guardian of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing—

(a) if the minor is legitimate, by the father, or by either parent if the other is dead or incapable of acting;

(b) if the minor is illegitimate, by the mother.

6. Where a minor is a person to whom the Indian Succession Act, 1865, does not apply, nothing in this Act shall take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which he is subject.

7. Where it appears to the Court that provision ought to be made—

(a) for appointing a guardian of the person or property, or both, of a minor, or

(b) for declaring the title of a person claiming to be such a guardian, the Court may make an order accordingly.

8. An order may be made under the last foregoing section on the application of—

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

*The Guardians and Wards Bill, 1886.**(Chapter II.—Appointment of Guardians.—Sections 9-14.)*

- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local area within which the minor resides or has property, or
- (d) the Collector having authority with respect to the class to which the minor belongs.

9. (1) The application shall be made either to the High Court having jurisdiction in the place where the minor resides or has property, or to the District Court having jurisdiction in that place.

(2) An application with respect to the guardianship of the person of a minor shall ordinarily be made to the Court having jurisdiction in the place where the minor resides.

(3) If an application with respect to the guardianship of the person or property, or both, of a minor is made to a Court other than that having jurisdiction in the place where the minor resides, the Court may refuse the application if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

10. (1) The application shall be by petition setting forth the grounds of the application, and stating—

- (a) the age and residence of the minor;
- (b) the nature and value of his property (if any);
- (c) where the person or property of the minor is not in the custody or possession of the petitioner, the person (if any) having the custody or possession of the person or property of the minor;
- (d) what relations the minor has, and where they reside;
- (e) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;
- (f) where the application is to appoint a guardian, the qualifications of the proposed guardian and his willingness to act;
- (g) where the application is to declare the title of a guardian, the grounds on which that title rests; and
- (h) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) The petition shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may be received as evidence of the facts stated therein.

11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

(a) to be served, in the manner directed in the Code of Civil Procedure, on the person (if any) named in the petition as having the custody or being in possession of the person or property of the minor, and on any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the court-house, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) When any part of the property described in the petition is of such nature that a Court of Wards could assume the superintendence thereof, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor resides, and on every Collector in whose district any portion of that part of the property is situate, and the Collector may cause the notice to be published in any manner he deems fit.

12. The Court may direct that the person (if any) having the custody of the minor shall produce him at such place and time as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

14. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) Separate guardians may be appointed or declared of the person and of the property of a minor.

(3) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

(4) If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall accept the guardian as duly appointed or declared and give effect to the order appointing or declaring him.

*The Guardians and Wards Bill, 1886.**(Chapter II.—Appointment of Guardians.—Sections 15-17.)**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 18-22.)*[Act XIII,
1874, s. 10.]

15. (1) In appointing or declaring the guardian of a minor the Court shall be guided by the law to which the minor is subject and by what appears to be, consistently with that law, for the best interest of the minor with respect to his mental, moral and temporal welfare.

(2) In considering what will be for the best interest of the minor, the Court shall have regard to his age, his relationship to the proposed guardian, the wishes of a deceased parent (if any), and any existing or previous connection of the proposed guardian with the person or property of the minor.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

X of
1885.

(4) In the case of persons to whom the Indian Succession Act, 1865, applies, as between parents adversely claiming the guardianship, neither parent is entitled to it as of right; but, other things being equal in such case, if the minor is of tender years, he should be given to the mother, and if he is of an age to require education and preparation for labour and business, then to the father.

[New.]

(5) Where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to an appointment or declaration asked for in an application.

(6) The Court shall not appoint a person to be guardian against his will.

[Act XL,
1858, s. 27;
Act XX, 1864,
s. 31: Act
XIII, 1874, s.
25: and Act
XVII, 1885,
s. 8.]

16. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the person of a minor—

- (a) who is a married female cohabiting with her husband, or
- (b) whose father is living and is not a minor or, in the opinion of the Court, unfit to perform, or incapable of performing, the duties of a guardian of the person of the minor, or
- (c) whose property is under the superintendence of a Court of Wards competent to appoint a guardian of his person.

[New.]

17. Where under this Chapter the Court appoints or declares a guardian of the property of a minor who is a member of an undivided Hindu family, it shall, except where it is proved to the satisfaction of the Court that the interests of the minor have been actually imperilled, appoint or declare the guardian subject to such restrictions as will prevent him from interfering with the powers of the managing member of the family.

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

Fiduciary relation of guardian to ward. 18. (1) A guardian must act for the benefit of his ward.

(2) He cannot make any profit out of his office.

(3) With respect to the property of the ward, he stands in the position of trustee for the ward, and is responsible for any loss occasioned to the property by his wilful default or gross negligence.

(4) This fiduciary relation extends to and affects purchases by a guardian of the property of his ward immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

Minor incompetent to act. 19. A minor is incompetent to act as guardian.

Guardian of the Person.

20. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

21. (1) If a ward leaves the custody of his guardian, he may be compelled by order of the Court to return to that custody.

(2) But the Court may refuse to make an order for his return to the custody of the guardian if it appears—

- (a) that the ward has been ill-treated by the guardian; or
- (b) that the conduct of the guardian in any other respect has rendered him unfit to have the custody of the ward; or
- (c) that the ward is, on reasonable grounds not inconsistent with the law to which he is subject, unwilling to return, and, having attained to years of discretion, is capable of exercising a wise choice as to the custody in which he will remain.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

22. (1) A guardian of the person appointed or declared by the Court shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such temporary purposes as may be prescribed or for the purpose of placing him beyond those limits at an educational institution appointed by the Local Government administering the territories

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 23-27.)*

within which the Court is established as an institution to which a guardian may send a ward without the leave of the Court.

(2) The leave granted by the Court under subsection (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

III. 23. (1) A guardian of the property of a ward
15.] Duties of guardian of must keep that property property. safely.

(2) In the case of immoveable property, he must not suffer any waste, but must maintain the buildings (if any) thereon and their appurtenances out of the rents and profits of the property.

24. Where a guardian of the property of a
18: ward has been appointed or
18: of guardian of property declared by the Court, he
XIII. appointed or declared by shall not, without the pre-
16.] the Court. vious permission of the Court,—

- (a) borrow for his ward; or
- (b) mortgage, charge or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward; or
- (c) lease any part of that property for a term exceeding three years; or
- (d) transfer any Government securities belonging to the ward, or the shares or other interest of the ward in any company; or
- (e) dispose of any other part of the principal of the property of the ward:

V. 25. (1) Provided that the Court may, subject to any
20.] rules made by the High Court under this Act, exempt a guardian from the necessity of obtaining the permission of the Court under this section, either generally or in special circumstances, and as to either the whole or any specified part of the property of the ward.

25. (1) Permission to the guardian to do any
Practice with respect of the acts mentioned in
to limitation of powers the last foregoing section
of guardian of property. shall not be granted by the
Court except in case of necessity or for an evident
advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to [New.] the permission the following among other conditions, namely:—

(a) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made by the High Court under this Act, directs;

(b) that a lease shall not be made in consideration of a premium, or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(c) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian to be invested by the Court on prescribed securities or otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian [New.] to do an act mentioned in the last foregoing section the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear, and record the statement of, any person who appears in opposition to the application.

26. (1) Where a guardian of the property of a
General powers of ward has been appointed or
guardian of property. declared by the Court, the
Court may from time to time, s. 20.] by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

(2) Subject to any such order and subject also to sections 17 and 24, a guardian appointed by or under a will or other instrument shall, with respect to the property of his ward, have such powers and be subject to such restrictions as are conferred or imposed on him by that instrument.

(3) Subject to the foregoing provisions of this [Act II, 1882, section, a guardian of the property of a ward may s. 36.] do all acts which are reasonable and proper for the realization, protection or benefit of the property of the ward and are allowed by the law to which the ward is subject.

27. (1) A guardian may apply by petition to [Act II, 1882, s. 34.] the Court for its opinion, advice or direction on any present questions respecting the management or administration of the property of his ward, other than questions not proper, in the opinion of the Court, for summary disposal.

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 28-33.)*

(2) A copy of the petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as guardian in the subject-matter of the application.

[Act XIII,
1874, s. 18.]

28. Where a guardian of the property of a ward has been appointed or declared by the Court, he shall—

[Act X, 1865,
s. 256, and
Act V, 1881,
s. 78.]

(a) if so required by the Court, give a bond, as nearly may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

[Act XL,
1858, s. 16,
and Act X
1864, s. 16.]

(b) deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

[Act XL,
1858, s. 16,
and Act XX,
1864, s. 16.]

(c) exhibit his accounts in the Court at such times and in such form as the Court directs;

[Act XL,
1858, s. 17,
and Act XX,
1864, s. 17.]

(d) if the Court so directs, pay into the Court the balance due from him on those accounts, or so much thereof as the Court directs, in the manner in which money is required by any rules for the time being in force to be paid into that Court;

[Act XL,
1858, s. 11:
Act XX,
1864, s. 10:
and Act XIII,
1874, s. 17.]

(e) apply for the maintenance, education and advancement of the ward such portion of the income of the property of the ward as the Court directs, and, if the Court so directs, the whole or any part of the principal of that property; and

[Act XL,
1858, s. 24,
and Act XX,
1864, s. 24.]

(f) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

[Act X, 1865,
s. 257, and
Act V, 1881,
s. 79, I. L. R.
5 All. 248.]

29. Where a guardian has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may at any time, on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that the money received be paid into the Court, or otherwise, as the Court thinks fit, assign the bond to some

proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, the full amount recoverable in respect of any breach thereof.

30. Where a guardian has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his legal representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, the full amount found in the suit to have been received by the guardian and not to have been duly accounted for.

31. Nothing in either of the last two foregoing sections shall be construed to deprive a ward or his legal representative of any remedy against his guardian, or the legal representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his legal representative would have against his trustee or the legal representative of the trustee.

Termination of Guardianship.

32. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

33. (1) The Court may, on the application of any person interested, or of its own motion, remove a guardian for any of the following causes, namely:—

- (a) for abuse of his trust;
- (b) for continued failure to perform its duties;
- (c) for incapacity to perform its duties;
- (d) for gross immorality;
- (e) for having an interest adverse to the faithful performance of his duties;
- (f) for removal from the local limits of the jurisdiction of the Court;
- (g) by reason of the arrival within those limits of some person whose guardianship the Court may think likely to be more beneficial to the ward than that of his guardian; or
- (h) in the case of a guardian of the property, for insolvency.

(2) When a guardian has been removed for any such cause, the Court may appoint a successor to him under the provisions of Chapter II.

*The Guardians and Wards Bill, 1886.**(Chapter III.—Duties, Rights and Liabilities of Guardians.—Sections 34-35.)**(Chapter IV.—Supplemental Provisions.—Sections 34-41.)*

1858, Act XX, s. 23; XIII, ss. 23.] **34. (1)** If a guardian desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is some other proper person whom it may appoint to be guardian under the provisions of Chapter II, it shall discharge the applicant from the guardianship and appoint the other person in his place.

1858, Act XX, s. 31; XIII, ss. 25.] **35. (1)** The power of a guardian of the person ceases—

- (a) by his removal or discharge;
- (b) by the Court of Wards assuming superintendence of the person of the ward;
- (c) by the ward ceasing to be a minor;
- (d) in the case of a female ward, by her marriage followed by cohabitation with her husband; or
- (e) in the case of a ward whose father was a minor, or deemed unfit to perform, or incapable of performing, the duties of a guardian of the person of the ward, by the father ceasing to be a minor or, as the case may be, to be deemed unfit or incapable as aforesaid.

(2) The power of a guardian of the property ceases—

- (a) by his removal or discharge;
- (b) by the Court of Wards assuming superintendence of the property of the ward; or
- (c) by the ward ceasing to be a minor.

(3) When for any cause a person ceases to be a guardian, the Court may require him to deliver as it directs any property in his possession belonging to the ward.

(4) When he has delivered as the Court directs the property, if any, in his possession belonging to the ward, the Court may declare him to be discharged from his liabilities as guardian, save as regards any fraud which may subsequently be discovered.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Act 1858, ss. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.] **36. (1)** The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian who has not been appointed by a Court of Wards, whether the guardian has been appointed or declared by the Court under this Act or not.

(2) In case of disobedience to an order made under sub-section (1), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of

Civil Procedure, as if the guardian were the defendant and the ward the plaintiff.

37. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, the guardian of the ward removes him from the limits of the jurisdiction of the Court in contravention of the prohibition contained in section 22, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment for a term which may extend to six months, or to both.

38. If a guardian fails to deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such shorter time as the Court directs, the statement mentioned in clause (b) of section 28, or to exhibit his accounts in the Court, as required by clause (c) of that section, or to pay into the Court the balance due from him on those accounts, as required by clause (d) of that section,

or if a person who has ceased to be a guardian fails, on the requisition of the Court, to deliver as the Court directs any property in his possession belonging to the ward,

he shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding fifty rupees for each day after the first during which the default continues and to detention in the civil jail until he consents to deliver the statement, or exhibit the accounts, or pay the balance, or deliver the property, as the case may be.

39. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act:

Provided that a person shall not be punished twice for the same offence

40. The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

41. An appeal shall lie to the High Court from an order made by a District Court—

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or
- (b) under section 9, sub-section (3), refusing an application; or
- (c) under section 21, making or refusing to make an order for the return of a ward to the custody of his guardian; or

*The Guardians and Wards Bill, 1886.**(Chapter IV.—Supplemental Provisions.—Sections 42-46.)**(The Schedule.—Enactments repealed.)*

- (d) under section 24, refusing to grant permission to the guardian to do an act mentioned in that section; or
- (e) under section 26, sub-section (I), defining, restricting or extending the powers of a guardian; or
- (f) under section 33, sub-section (I), removing a guardian; or
- (g) under section 34, refusing to discharge a guardian; or
- (h) under section 36, regulating the conduct or proceedings of a guardian, or enforcing the order; or
- (i) under section 37 or section 38, imposing a penalty.

[Act IX, 1861,
s. 6, and Act
XIII, 1874,
s. 9.]
XIV of 1882.

42. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

[Act X, 1865,
s. 241, and
Act V, 1881,
s. 57.]

43. The High Court may refuse an application made to it under this Act if in its opinion the application would be disposed of more justly or conveniently by any other Court having jurisdiction.

[Act XL,
1858, s. 13,
and Act XX,
1864, s. 13.]

44. The costs of any proceeding under this Act shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is held.

[New of Act
XIII, 1874,
s. 8.]

45. In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules—

- (a) as to the procedure to be followed with respect to applications of guardians for permission to do acts mentioned in section 24;
- (b) as to the security to be required from guardians;
- (c) as to the preservation of statements and accounts delivered and exhibited by guardians;
- (d) as to the inspection of those statements and accounts by persons interested;
- (e) as to the custody of money, and securities for money, belonging to wards;
- (f) as to the securities on which money belonging to wards may be invested;
- (g) as to allowances to be granted to guardians for their care and pains in the execution of their duties; and
- (h) generally, for carrying out the purposes of this Act.

46. A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed under Chapter II.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title or subject.	Extent of repeal
<i>Acts of the Governor General in Council.</i>		
XIV of 1858	Minors (Madras)	The whole.
XL of 1858	Minors (Bengal)	So much as has not been repealed.
XX of 1864	Minors (Bombay)	The whole.
IX of 1861	Minors	The whole.
VII of 1870	Court-fees	Section 19 H, and article 10 of Schedule I.
IV of 1872	Punjab Laws	So far as it relates to Act XL of 1858.
XIX of 1873	North-Western Provinces Land-revenue.	Section 258.
XIII of 1874	European British Minors	The whole.
XV of 1874	Laws Local Extent.	So far as it relates to any enactment repealed by this Act.
XVII of 1875	Burma Courts	Section 96.
XX of 1875	Central Provinces Laws	So far as it relates to Act XL of 1858.
XVIII of 1876	Oudh Laws	So far as it relates to Act XL of 1858.
<i>Madras Regulations.</i>		
V of 1804	Court of Wards	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X of 1831	Minors' Estates	Section 3.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill to consolidate and amend the law relating to Guardian and Ward is based on opinions elicited by a reference to Local Governments and High Courts on the subject of certain defects in the law relating to the guardianship of minors, and its object is to provide a law of Guardian and Ward applicable as far as possible to all classes of Her Majesty's subjects in British India.

2. Among the enactments which the Bill will supersede are Act XL of 1858 and portions of the Madras Code, relating to minors in the Presidencies of Bengal and Madras who are not European British subjects and are not under the superintendence of a Court of Wards; Act XX of 1864, relating to minors in the Presidency of Bombay who are not European British subjects; Act IX of 1861, relating to the custody and guardianship of minors who are not European British subjects; and Act XIII of 1874, relating to the guardianship of European British minors in territories beyond the jurisdiction of the chartered High Courts.

3. The Bill, which follows generally the frame of Act XIII of 1874, is drawn as applicable to all District Courts and High Courts (including the chartered High Courts) and to minors of all creeds and races. But it does not take away any of the powers at present possessed by the chartered High Courts, and it provides that, in the selection of guardians and other matters, regard shall be had to the personal law of the minor. The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law.

4. One effect of the assimilation of the law will be to do away with the rule, which obtains in the Presidencies of Bengal and Bombay, that no person shall be entitled to institute or defend any suit connected with a minor's estate of which he claims the charge until he has obtained a certificate of administration. It is proposed that suits by and against minors shall be regulated by Chapter XXXI of the Code of Civil Procedure, and that, in a Bill which is to be introduced to amend that Code, provision be inserted conferring, among other privileges, on a guardian who has been appointed, or whose title has been declared, under the Guardians and Wards law, a preferential right to be appointed next friend or guardian for the suit.

5. The several sections of the Bill which appear to call for remark will now be noticed in consecutive order.

6. *Section 4, clause (1).*—In connection with section 26, Act XL of 1858, section 30, Act XX of 1864, and section 2, Act XIII of 1874, the question arose whether the age of majority should be dealt with in the Bill. As there was no necessity to deal with it, it was considered expedient to avoid the difficulty of doing so by defining "minor," in the terms of section 11 of the Indian Contract Act, 1872, as a person who has not reached the age of majority according to the law to which he is subject.

7. *Section 4, clause (2).*—"Guardian" has been so defined as to mean any person having the care of the person of a minor or of his property, or of both his person and property. The Bill, therefore, relates to guardians generally except where it is expressed to relate to particular classes of guardians.

8. *Section 5.*—This section follows Act XIII of 1874, which, in recognising in certain circumstances the right of a mother to appoint a guardian, was based on the New York Civil Code. The section goes beyond section 47 of the Indian Succession Act and beyond the English law. But under the English law an appointment by a mother is not now wholly ineffectual, and is likely at no distant date to be declared to be valid except in so far as it may interfere with an appointment by the father.

9. *Sections 9 and 43.*—The High Court and District Court will have concurrent jurisdiction, but the High Court may refuse an application with respect to the guardianship of a minor if in its opinion the application would be disposed of more justly or conveniently by a District Court. Where the application is with respect to the guardianship of the person of a minor, it is ordinarily to be made to the Court having jurisdiction in the place where the minor resides, that being the Court which can most effectively discharge the duties incident to the appointment of a guardian to the person of the minor.

10. *Section 11, sub-section (2).*—The sub-section follows an order made by the High Court of Judicature for the North-Western Provinces with a view to facilitating the discharge by Collectors of their duty of ascertaining and reporting to the Court of Wards from time to time what proprietors may come within the description of disqualified landholders.

11. *Section 14, sub-section (4).*—The rule laid down in this sub-section is, as explained by Sir Arthur Hobhouse with respect to the corresponding section in Act XIII of 1874, based solely on grounds of convenience.

12. *Section 15, sub-section (3), and section 17.*—As regards a minor who is a member of an undivided Hindu family, it seems to be generally admitted that it is desirable, as a rule, to leave him to his natural guardians without interference. But such a minor has certain rights in respect of the family property, and those rights are capable of being protected by a guardian. The guardian could not assume the management of the common property, and possibly he would, owing to the constitution of the co-ownership, be debarred from taking directly even a share in the management, and be confined to a mere power of control from without and a right in the last resort to demand a partition. But even this limited authority might in some cases be of great importance.

As regards the view hitherto taken by the Courts on this subject, it has indeed been held by the High Courts at Fort William and Bombay that Acts XL of 1858 and XX of 1864 could not be applied where the minor had no rights except as a member of an undivided Hindu family (I. L. R. 5 Cal. 219 and 3 Bom. 431, and 12 Bo. H. C. Rep. 247). Some doubt has been thrown on this view by the case before the Privy Council reported in I. L. R. 8 Cal. 656 (I. L. R. 6 Bom. 595 and 8 Bom. 396); but in any case it is a view which seems to be based on the peculiar wording of those Acts, which have been construed as contemplating an actual and (perhaps) corporeal taking charge of and management of some tangible property. In other words, these cases merely decide that under the particular Acts a manager cannot be appointed for a minor member of a pure joint family, not that such a manager is a thing inconceivable or impossible (I. L. R. 7 Cal. 369).

As regards the provisions of certain enactments which allow the Court of Wards to take charge only of the estate of a minor who is a sole owner (Act IV, 1872, section 35, Act XVII, 1876, section 161, and Bengal Act IX, 1879, section 7), they are to be accounted for by the fact that these enactments were designed mainly to guard against the risk of loss of revenue from an estate being left without any competent person in charge of it. That it was not considered impossible to take charge of the interest of a minor shareholder is manifest from Madras Regulations V of 1804, section 20, and X of 1831, section 3, and from the circumstance that section 14 of Act XL of 1858 and other similar enactments provide for the Collector taking charge of the share of a co-owner who is still a minor on the estate escaping from the management of the Court of Wards owing to the other co-owners having come of age. The Courts of Wards in the North-Western Provinces (Act XIX of 1873) and Central Provinces (Act XVII of 1885) are not precluded from assuming superintendence of the interest of a disqualified person who is a co-owner in an estate with other persons who are not disqualified.

It may be gathered from the proceedings of the Legislative Council, 1854-55, pages 672 *et seq.*, that it was the intention of the framers of Act XL of 1858 that the Civil Court should appoint guardians for minors owning shares in estates, and it would seem that it is only owing to the peculiar wording of the Act, coupled perhaps with a natural disinclination on the part of the Courts to interfere between joint-owners, that that intention has been defeated.

13. *Section 18.*—This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrime fidei*, not only while it lasts, but even after it has ceased to exist.

14. *Sections 24 and 25.*—These sections are based on section 18 of the Acts of 1858 and 1864 and the corresponding section of the Act of 1874, on certain provisions in the Code of Lower Canada, and on suggestions received for the amendment of the Acts of 1858 and 1864. They provide that a guardian who has been appointed, or whose title has been declared, by the Court, shall not borrow for his ward, or transfer any part of the principal of his property, without the permission of the Court, and that the Court, before granting its permission, shall satisfy itself that the transaction proposed is either necessary or for the evident advantage of the ward, and, when granting the permission, shall itself record an order setting forth the necessity or advantage and the conditions subject to which it permits the loan to be taken or the transfer to be effected (I. L. R. 5 Cal. 363 and 6 Cal. 161).

These sections will be supplemented by rules made by the High Court under section 44.

15. *Section 28, clause (a), and section 29.*—These provisions are suggested by the case reported at I. L. R. 5 All. 248.

16. *Section 32.*—The rule contained in this section follows from guardianship being a trust. Though the right of survivorship is not acknowledged in England in the case of guardians appointed by the Court of Chancery, yet in practice the survivor or survivors will be re-elected by the Court without a reference. In America there is the right of survivorship among guardians appointed by the Court of Chancery.

17. *Section 33.*—A testamentary guardian may be removed under this section.

18. *Section 41.*—The cases reported at 15 W. R. 492 and 22 W. R. 479 have suggested the specification of the orders from which an appeal shall lie.

19. Acts XL of 1858 and XX of 1864 provide, in sections 27 and 31, respectively, that nothing in those Acts shall authorise the appointment of any person other than a female as the guardian of the person of a female. The cases reported at I. L. R. 10 Cal. 15 and 11 Cal. 574, and the remarks at pages 213-14 of Sayyid Amir Ali's *Personal Law of Muhammadans*, seem to render the re-enactment of the provision inexpedient. Section 15 of the Bill specifies the matters by which the Court is to be guided in appointing a guardian, and one of those matters is the law to which the minor is subject.

20. The provision of Act XX of 1864, that the legal heir of a minor, or the person next in succession to his property, may not be appointed guardian of the person of the minor, has not been repeated. It is considered that the appointment of such persons should not be absolutely prohibited. This was the opinion of the Supreme Council when Act XL of 1858 was about to be enacted (Proceedings of Legislative Council, 1858, pages 576-77), and is the opinion of the Hon'ble Mr. M. Melvill.

21. If the Bill becomes law in its present form, article 10 of Schedule I of the Court-fees Act, 1870, which applies only to the Presidencies of Bengal and Bombay, will become obsolete. It has, therefore, been included in the schedule of enactments to be repealed.

22. A table is appended showing how the principal enactments scheduled for repeal have been reproduced in the Bill or otherwise dealt with.

The 12th March, 1886.

C. P. ILBERT.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XIV OF 1858:	
Section 1	} Sections 20, 28 (e) and 36 of Bill.
2	
3	
4	
	Section 21 of Bill.
	Sections 41 and 42 of Bill.
ACT XL OF 1858:	
Section 1	Repealed by Act XIV of 1870.
2	Sections 3, 26 and 36 of Bill.
3, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute	Left to be dealt with in the Bill to amend
proviso } or defend suits on	
	behalf of minors.
4	Section 8 of Bill.
5	Section 9 of Bill.
6, paragraph 1	Section 11 (1) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
7	Sections 7 and 8 of Bill.
8	Section 40 of Bill.
Sections 9, 10 and 11, paragraphs 1 and 2	Sections 7 and 14 (2) of Bill.
Section 11, paragraph 3	Section 28 (f) of Bill.
paragraph 4	Section 28 (e) of Bill.
12: when Collector may be directed to take charge of estate. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879.</i>)	Unnecessary. The Court of Wards can act in cases in which management by the Collector is desirable.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—contd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
Act XL of 1858:—contd.	
Section 13	Section 44 of Bill.
14: when Collector may be directed to retain charge of shares and persons of certain minors. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879, and in Central Provinces by Act XVII of 1885.</i>)	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector. (<i>Repealed in Lower Provinces by Bengal Act IX of 1879.</i>)	Unnecessary, as the Bill is framed.
16, paragraph 1	Section 28 (b) of Bill.
paragraph 2	Section 28 (c) of Bill.
paragraph 3	Compare sections 29 and 30 of Bill.
17	Sections 28 (d) and 45 (e) and (f) of Bill.
18, paragraph 1	Section 26 (3) of Bill.
paragraph 2	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21 (<i>Repealed in part in Lower Provinces by Bengal Act IX of 1879.</i>)	Sections 33 and 35 (3) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (3) and (4) of Bill.
24	Sections 28 (f) and 45 (g) of Bill.
25 (<i>Repealed in part in Lower Provinces by Bengal Act IV of 1870, section 86.</i>)	Sections 20, 28 (e) and 36 of Bill.
26	Section 4 (1) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
27, paragraph 1, first sentence.	Section 16 of Bill.
second sentence: guardians of females to be themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2	Section 35 (1) (d) and (e) of Bill.
28	Section 41 of Bill.
29, paragraph 1, first sentence	Sections 4 (4) and 9 of Bill.
second sentence	Section 3 of Bill.
paragraph 2 (<i>number and gender</i>)	Not reproduced. See the General Clauses Act, I of 1868.
Act IX of 1861:	
Section 1, first sentence	Sections 7, 8, 9 and 10 of Bill.
second sentence	Section 11 (1) of Bill.
2	Section 12 of Bill.
3	Sections 7, 13 and 44 of Bill.
4: application of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
5	Section 41 of Bill.
6	Section 42 of Bill.
7	Section 3 of Bill.
8: definition of "Sadr Court"	Not reproduced. See the General Clauses Act, I of 1868.

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—contd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864 :	
Section 1	Sections 26 and 36 of Bill.
2, paragraph 1	Section 8 of Bill.
paragraph 2 } who to institute or	Left to be dealt with in the Bill to, amend the Code of Civil Procedure. See paragraph 4 of Statement of Objects and Reasons.
proviso } defend suits on behalf of minors.	
3	Section 8 of Bill.
4	Section 9 of Bill.
5, paragraph 1	Section 11 (I) of Bill.
paragraph 2	Section 13 of Bill.
proviso	Section 40 of Bill.
6	Sections 7 and 8 of Bill.
7	Section 40 of Bill.
Sections 8, 9 and 10, paragraphs 1 and 2, and proviso.	Sections 7 and 14 (2) of Bill. See paragraph 20 of the Statement of Objects and Reasons.
Section 10, paragraph 3	Section 28 (f) of Bill.
10, paragraph 4	Section 28 (e) of Bill.
11: when Collector may be directed to take charge of estate	Unnecessary, as section 7 is framed.
12	Section 28 (a) of Bill.
13	Section 44 of Bill.
14: procedure when proprietor of estate under Collector's charge comes of age.	Unnecessary, as Chapter II is framed. See paragraph 12 of Statement of Objects and Reasons.
15: control of proceedings of Collector.	Unnecessary, as the Bill is framed.
16, paragraph 1	Section 28 (b) of Bill.
paragraph 2	Section 28 (c) of Bill.
paragraph 3	Compare sections 29 and 30 of Bill.
17	Sections 28 (d) and 45 (e) and (f) of Bill.
18, paragraph 1	Section 26 (3) of Bill.
paragraph 2	Sections 24 and 25 of Bill.
19	Sections 29, 30 and 31 of Bill.
20: continuance of suit after disqualification ceases.	Will be covered by the Code of Civil Procedure.
21	Sections 33 and 35 (3) of Bill.
22	Section 38 of Bill.
23, first sentence	Section 34 of Bill.
second sentence	Section 35 (3) and (4) of Bill.
24	Sections 28 (f) and 45 (g) of Bill.
25	Sections 20, 28 (e) and 36 of Bill.
26	} Sections 20, 22 (1) and 36 of Bill.
27	
28	Section 28 (e) of Bill.
29: marriage of minors	Compare sections 20, 24 and 28 (e) of Bill.
30	Section 4 (I) of Bill: and see paragraph 6 of Statement of Objects and Reasons.
31, paragraph 1: as to guardians of married females.	Section 16 of Bill.
paragraph 1: as to guardians of females being themselves females.	Not reproduced. See paragraph 19 of Statement of Objects and Reasons.
paragraph 2: guardianship to cease when husband attains majority.	Section 35 (1) (d).

Statement shewing how the principal Enactments scheduled for repeal in the Guardians and Wards Bill have been reproduced in the Bill or otherwise dealt with—concl'd.

Enactments scheduled for repeal.	How reproduced or otherwise dealt with.
ACT XX OF 1864:— <i>cont'd.</i>	
Section 32: saving of Act XXXV of 1858 (<i>Lunatics</i>).	Not reproduced.
33	Section 41 of Bill.
34, paragraph 1	Sections 4 (4) and 9 of Bill.
paragraph 2	Section 3 of Bill.
paragraph 3 (<i>number and gender</i>)	Not reproduced. See the General Clauses Act, I of 1868.
ACT XIII OF 1874:	
Section 1 (Formal)	
2 "Minor"	Section 4 (1) of Bill.
"Guardian"	Section 4 (2) of Bill.
"Court"	Sections 4 (4) and 9 of Bill.
3	Section 5 of Bill.
4, paragraph 1	Section 7 of Bill.
paragraph 2	Section 14 (3) of Bill.
paragraph 3	Section 14 (4) of Bill.
5, paragraph 1	Sections 8 and 10 (1) of Bill.
paragraph 2	Section 10 (2) of Bill.
paragraph 3	Section 11 (1) of Bill.
6	Section 12 of Bill.
7	Sections 7, 13 and 44 of Bill.
8, paragraph 1, first and second sentences: applica- tion of Code of Civil Procedure.	Not reproduced. See section 647 of the Code of Civil Procedure.
third sentence	Section 41 of Bill.
paragraph 2 (Forms)	Not reproduced.
paragraph 3	Section 45 of Bill.
9	Section 42 of Bill.
10, clause (a)	Section 15 (1) and (3) of Bill.
clause (b)	Section 15 (4) of Bill.
clause (c)	Section 15 (2) of Bill.
11	} Section 20 of Bill.
12	
13	Section 21 of Bill.
14, paragraph 1	Section 22 (1) of Bill.
paragraph 2	Section 37 of Bill.
15	Section 23 of Bill.
16	Sections 24 and 25 of Bill.
17	Section 28 (e) of Bill.
18, clauses (a) to (d)	Section 28 (a), (c), (d) and (f) of Bill.
18, clause (e)	Section 18 (3) of Bill.
19	Section 19 of Bill.
20	Sections 26 (1) and 36 (1) of Bill.
21	Section 32 of Bill.
22	Section 33 of Bill.
23	Section 34 of Bill.
24	Sections 33 (2) and 34 (2) of Bill.
25, paragraph 1	Section 35 (1) of Bill.
paragraph 2	Section 35 (2) of Bill.
Schedule (Forms)	Not reproduced.

PRÉCIS OF THE OPINIONS REFERRED TO IN PARAGRAPH 1 OF THE STATEMENT OF OBJECTS AND REASONS OF THE GUARDIANS AND WARDS BILL.

IN correspondence* with the Government of Bombay in the year 1881, several points were brought to notice on which an amendment of the law relating to the guardianship of the persons and property of minors in that Presidency (Act XX of 1864) was shewn to be required. Before proceeding to carry out these amendments, the Government of India issued a Resolution† inviting the opinions and suggestions of Local Governments and Administrations on the following selected points, with a view to the consolidation of the several Acts and Regulations relating to minors in force in the three Presidencies :—

I.—Whether the provision of Act XX of 1864, section 2, clause 2 (and of the Bengal Act, XL of 1858, section 3, clause 2), prohibiting any person (except in certain cases in which the Court is allowed to direct otherwise) from instituting or defending any suit connected with the estate of which he claims charge unless he has obtained a certificate of administration from the Civil Court, should not be repealed.

II.—Whether a next friend or a guardian ad litem should (by an extension of section 461 of the Code of Civil Procedure) be allowed to execute a decree or receive money or property in the course of litigation, it being made clear that a next friend or guardian ad litem, who is also a guardian appointed under the Minors' Act with power to receive money on behalf of the minor, shall not be required to give security.

III and IV.—Whether the following proposals made by the Hon'ble Mr. Justice Melvill with a view to rendering it unsafe for any person to enter into any transaction affecting immoveable property, except with a certificated administrator, should be accepted, namely :—

(a) that any alienation or incumbrance of, and any abandonment of the rights of the minor in, any immoveable property, by a guardian, should be made void, unless he holds a certificate under the Minors' Act; and

(b) that the provision in the second clause of section 18 of Acts XX of 1864 and XL of 1858, which requires the previous sanction of the Civil Court to any alienation or incumbrance of immoveable property by a certificated guardian, should be repealed.

—Whether, assuming it to be the intention of the legislature (see sections 464, 440 and 441 of the Code of Civil Procedure) that a guardian appointed under the Minors' Act possesses no right as such to appear on behalf of a minor, but that he must sue as next friend or be appointed to defend as guardian ad litem, the Code of Civil Procedure should not be amended so as to make this more clear.

VI.—Whether the first clause of section 18 of Acts XX of 1864 and XL of 1858 should not be amended so as to provide that a guardian by appointment or relationship should, when his title is declared by the Court, possess simply the same powers which he possessed before procuring a declaration of title, and that the order of the Court should have no effect except that of declaring his status; and, further,

(a) whether, if the powers of a guardian who owes his status to the mere act of the Court are defined at all, they should not be defined in some way which would indicate that persons having transactions with him should bear in mind his representative character, and should not deal with him as they would if he were acting on his own account.

VII.—Whether (if clause 2 of section 18 of Acts XX of 1864 and XL of 1858 is retained) it should not be made clear that the effect of the Court's sanction to sell, alienate, &c., any immoveable property is to give the purchaser a good title to such property, in the absence of fraud or collusion on his part.

VIII.—Whether, if it should be decided to consolidate the law for the whole of British India, the new Act should not be extended to the original local jurisdiction of the Presidency High Courts; and

(b) whether the Courts in appointing guardians of property should not be given power to make appointments limited to particular property.

IX.—Whether the proposed new Act should not be confined to Hindus, Muhammadans and Buddhists, and other persons who have definite personal laws, and the European British Minors' Act, XIII of 1874, made applicable to all other classes of persons and its operation extended to the whole of British India, including the Presidency-towns, the jurisdiction of the High Courts in respect of European British Minors being abolished.

2. Local Governments and Administrations were also requested to submit their opinions on any other points which they might desire to bring forward for consideration in connection with the proposed legislation.

3. In the following paragraphs (4 to 240) the views of the Government of India and the remarks of Local Governments and officials on Points I to IX are noted.

I.—Whether the provision of Act XX of 1864, Point 1—section 2, clause 2 (and of the Bengal Act, XL of 1858, section 3, clause 2), prohibiting any person (except in certain cases in which the Court is without certificate of administration allowed to direct otherwise) from instituting or defending any suit connected with the estate of which

* Home Department's Judicial Proceedings, Nos. 8 to 17 and for August, 1881, and Nos. 167 to 172 for October 1882.

† No. 22 dated 17th October, 1882 (Home Department's Judicial Proceedings, No. 171, for October, 1882).

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point I.—Appearance of guardian in Court without certificate of administration.)
he claims charge unless he has obtained a certificate of administration from the Civil Court, should not be repealed.

4. This proposal was put forward by the Government of India, with reference to difficulties arising on the construction of the clause in question in connection with Chapter XXXI of the Code of Civil Procedure (*Suits by and against Minors, &c.*), and, also with reference to a proposal made by the Hon'ble Mr. Justice Melvill that every person who requires the assistance of the Court should be compelled to take out a certificate of administration. The reasons by which the Government of India's proposal was supported are as follow:—

"The fact that a person asserts a claim to be the guardian of a minor, whether by appointment or by relationship, seems scarcely to afford any sufficient reason for absolutely precluding him from acting as next friend or guardian *ad litem* under the provisions of the Civil Procedure Code until he has established his claim to the guardianship under the Minors' Act. If such person is actually entitled to the guardianship by virtue of appointment or relationship, it may be urged that he should certainly be allowed, in preference to any other person, to act for the limited purposes of litigation; but, on the other hand, if he is not so entitled, the circumstance of his having asserted his claim to the guardianship need not apparently be made an absolute disqualification. There are doubtless cases in which the circumstance that a person sets up an unfounded claim to the guardianship of a minor might properly be treated as unfitting him to act as next friend or guardian *ad litem*; but this point might be left to be settled by the Courts, it being understood that the decision should not in any way be made to depend on the circumstance whether the person concerned did or did not put forward a claim to guardianship in connection with the particular suit in which it was proposed that he should act."

5. MR. P. P. HUTCHINS, DISTRICT JUDGE OF MADURA (AFTERWARDS JUDGE OF THE HIGH COURT, MADRAS),—

says there is no provision in the Madras law corresponding to section 2, clause 2, of Act XX of 1864. He agrees, however, with the Government of India in thinking that the provision in the Bombay and Bengal laws might be repealed.

6. MR. C. G. PLUMER, JUDICIAL COMMISSIONER OF COORG,—

suggests that for section 2, clause 2, of Act XX of 1884 should be substituted the provision of Rule 13 of the Rules for the custody and guardianship of Minors, &c., in Mysore,* which requires that any guardian or manager appointed under the rules shall be admitted by the Courts as guardian *ad litem*.

7. MR. E. BARCLAY, GOVERNMENT SOLICITOR, MADRAS,—

would go further even than Mr. Justice Melvill proposed, and provide that every person should be prohibited from interfering with the estate of any minor, within a limit of value to be fixed by Government, without obtaining a certificate of

administration. From this rule, however, he would except undivided shares of minors who are members of a joint Hindu family; in which cases he would provide for the Collector being *ex officio* manager unless and until a certificate is issued to some qualified private person. He suggests that the rule should embrace moveable as well as immoveable property, and he does not think it would affect so large a number of estates as the Government of India seem to anticipate (see paragraph 7 of the Resolution of 17th October, 1882).

With regard to the proposal put forward by the Government of India, Mr. Barclay writes as follows:—

"I think Chapter XXXI of the Code of Civil Procedure should be amended, and that no person should be allowed to institute a suit on behalf of a minor unless such person be manager of his estate (the Collector) or the holder of a certificate of administration. Such manager or the holder of a certificate, as he will sue in his representative character only, should not, I think, be made personally liable for costs, unless the Court finds by its decree that the suit was brought vexatiously; but provision might be made for his giving security for costs by depositing cash or Government securities belonging to the estate of the minor. With regard to suing for debts due by the estates of minors, the manager of the estate of a minor or the holder of a certificate of administration of his estate, as the case might be, could be made defendant in the same way as the executor of a will or the administrator of the estate of a deceased person is now made defendant in a suit to recover a debt due by the estate of a testator or intestate. The amendment of Chapter XXXI of the Code of Civil Procedure would apply only to such cases as might come within the provisions of the new Minors' Act."

8. MR. ANSAR-UD-DIN, PRESIDENCY MAGISTRATE, MADRAS,—

knows many cases in which persons entitled by virtue of relationship to the guardianship of a minor act as next friend or guardian *ad litem* already, and he thinks it desirable that this arrangement should, in view of difficulties arising from attending the Courts to take out a certificate, be continued.

9. MR. J. W. HANDLEY, CHIEF JUDGE OF THE MADRAS COURT OF SMALL CAUSES,—

thinks the clause in question should be repealed because its tendency is, in all minors' suits of small value, and in all cases where minors are defendants, to cause a deadlock.

10. MR. G. MUTTUSWAMY CHETTIAR, JUDGE OF THE MADRAS COURT OF SMALL CAUSES,—

agrees with Mr. Handley.

11. THE MADRAS BOARD OF REVENUE—

concur with the Government of India.

12. MR. JUSTICE WEST—

thinks no person wishing to sue as next friend on behalf of a minor should be subjected to any restriction other than those involved in proper rules as to costs.

* See Gazette of India, 27th April, 1872, Part I, p. 453.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point I.—Appearance of guardian in Court without certificate of administration.)

13. SIR CHARLES SARGENT, CHIEF JUSTICE, BOMBAY,—

considers the clause in question should be repealed, both because it is, generally speaking, in the interest of minors that any person properly qualified under section 445 of the Civil Procedure Code should be allowed to act for a minor as his next friend or guardian *ad litem*, and because a certificated administrator may not fulfil the conditions prescribed by that section. He suggests, however, that the practice now prevailing in the Bombay High Court of requiring persons wishing to institute a suit for a minor to obtain the consent of the Court should be adopted.

14. THE HON'BLE MR. PAUL, ADVOCATE GENERAL OF BENGAL,—

thinks the clause in question should be repealed, but that at the same time the Courts should exercise some control, and to this end suggests that the next friend should be required to obtain the sanction of the Court.

In regard to the Hindu joint family question, please see his remark in paragraph 380, *infra*.

15. MR. T. T. ALLEN, SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL,—

says the clause in question contains a perfectly intelligible and proper direction, which has long been acted upon with advantage to the people; and he thinks it should be maintained in spite of the rule in the Civil Procedure Code. He argues further that the two provisions are scarcely inconsistent, inasmuch as that contained in the Minors' Act very properly requires a regular guardian to have his authority for acting sanctioned by the District Judge, while that contained in the Civil Procedure Code merely authorises any other person at his own risk and where there is no regular guardian to act in behalf of a minor; the two provisions consequently referring to two different classes of cases.

16. MR. JUSTICE FIELD, OF THE CALCUTTA HIGH COURT,—

notes that there is a very important difference between suits brought under the clause in question and suits to which Chapter XXXI of the Civil Procedure Code is applicable; namely, that in the former case the person acting ought to appear as the plaintiff or defendant *upon the record*, while in the latter the minor himself appears as plaintiff or defendant on the record. The result he describes as follows:—

"Where a decree is made against a minor, he is bound by such decree, although there has been no enquiry whether the transaction is for his benefit, except in cases of fraud, collusion or error (see Daniell's Chancery Practice, 5th Edition, pp. 148, 149, 156, 157). Where, on the other hand, the person who has obtained the certificate of administration is the plaintiff or defendant upon the record, there may be a subsequent enquiry as to whether he acted in the interests of the minor or not, and this for more than one purpose."

Mr. Field suggests that it should be made clear that a person who has obtained a certificate under the Minors' Act should sue and be sued in his own name.

17. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) say Mr. Justice Melvill's proposal, that every person who requires the assistance of the Court should be compelled to take out a certificate of administration, would make it impossible for the provisions of Chapter XXXI of the Civil Procedure Code to be employed in certain cases, and they do not see any sufficient reason for adopting it.

They concur with the Government of India that there may be cases in which a person who, though entitled to claim the charge of the minor's estate, does not choose to claim it, and may yet be the fittest person to act as next friend or guardian to the minor for a particular suit; and they agree with the Government in considering that in such cases the question whether such person should be appointed next friend or guardian *ad litem* may properly be left to be decided by the Court which has the case before it, and can draw its own inferences from the conduct of the party as to his fitness for the appointment.

18. SIR ROBERT STUART, (LATE) CHIEF JUSTICE, NORTH-WESTERN PROVINCES,—

strongly objects to Mr. Justice Melvill's proposal to require certificates in all cases.

19. MR. JUSTICE OLDFIELD—

writes as follows:—

"Only guardians holding certificates should, as a rule, be permitted to institute suits or make applications on behalf of minors; but a discretion may be given to the Court to allow the next friend to appear when no certificate has been taken out. In regard to minors who are defendants, the provisions of Chapter XXXI, Civil Procedure Code, for appointing guardians *ad litem* are proper and adequate."

20. MR. JUSTICE STRAIGHT—

writes as follows:—

"There is undoubtedly much confusion caused by the concurrent existence of the second part of section 3 of the Bengal Minors' Act and the provisions of Chapter XXXI of the Civil Procedure Code, and we have more than once found considerable complication and difficulty caused thereby. I generally concur in the remarks made upon this matter in paragraph 5 of the Minute of the Government of India; and I think that, while the prohibition to suits being instituted without certificate might be done away with, amendments might be introduced into Chapter XXXI of the Code which would effectually protect the minor litigant's interests."

21. MR. H. J. SPARKS, JUDICIAL COMMISSIONER OF OUDH,—

approves of the Government of India's proposal.

22. MR. B. W. COLVIN, (LATE) JUNIOR MEMBER OF THE BOARD OF REVENUE, NORTH-WESTERN PROVINCES,—

approves of Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration. Most estates are, he says

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managed without any reference to the Courts; but in all cases which do come before a Court the Court is even now obliged to satisfy itself that the person claiming to act for the minor is duly qualified to represent his interests, and it seems better that when such an enquiry is once made it should confer a general protection upon the minor, rather than one limited to the particular case before the Court. Mr. Colvin would, however, except from such a rule all properties below a certain minimum of value, arbitrarily fixed, but open to reduction as experience is gained and the people become familiar with the rule.

23. MR. W. DUTHOIT—

sees no objection to the Government of India's proposal if his recommendations under Point II (see paragraph 57 of précis) are adopted. For his opinion on Mr. Justice Melvill's proposal, please see paragraph 291, *infra*.

24. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

concurs with the majority of the officers consulted by him in thinking that Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration should not be accepted, his reasons being that its adoption is not shown to be required, and that it would increase litigation.

He agrees with the Government of India in thinking that any doubts regarding the correspondence of the second clause of section 3 of Act XL of 1858 with Chapter XXXI of the Civil Procedure Code should be set at rest; but he observes that the advisability of altogether omitting that clause to some extent depends on how far, if at all, the Revenue Courts of the North-Western Provinces are bound to follow the Code of Civil Procedure where the North-Western Provinces Rent Act (Act XII of 1881) prescribes no special procedure for their observance. On this subject, he says, there has been a recent Full Bench ruling of the High Court, which he has not however yet had an opportunity of considering; and at present he can only request that the position of minors in Revenue Courts be borne in mind in any proposed legislation affecting section 3 of Act XL of 1858.

25. MR. JUSTICE SMYTH, OF THE PUNJAB CHIEF COURT,—

says applications for certificates of administration are seldom made in the Punjab; that they are usually made only when rival claimants dispute the guardianship of the person or property of a minor relative; and that such disputes appear to be few in number. He would greatly regret any change which would have the effect of increasing the number of minors' cases in the Courts. (This, apparently with reference to Mr. Justice Melvill's proposal noted in paragraph 4, *supra*.)

Numerous suits are, he says, brought in which minors are either plaintiffs or defendants, and as a rule relatives have, under the *proviso* to section 3 of Act XL of 1858, without much difficulty been allowed to sue or defend without being required to obtain a certificate of administration; "and

the same practice is continued under Chapter XXXI of the new Code of Civil Procedure." If section 461 is extended, as proposed by the Government of India (see paragraph 47 of précis), Mr. Smyth thinks the second clause of section 3 of Act XL of 1858 might safely be repealed, so far as the Punjab is concerned.

26. LALLA MADAN GOPAL, PLEADER, OF DELHI,—

thinks the second clause of section 3 of Act XL of 1858 should, as proposed by the Government of India, be repealed. He considers the limitation which it imposes is undesirable in the interests of minors; and, further, that it is rendered useless by Chapter XXXI of the Civil Procedure Code.

In another part of his memorandum, however, he expresses approval of Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration, thinking it should be adopted, in the interests of the minor, in spite of any inconvenience which might result.

27. LALLA GIRDHARI LAL, PLEADER, OF DELHI,—

thinks guardians should be compelled to take out a certificate of administration, excepting only in cases where the estate is of small value.

28. COLONEL C. A. McMAHON, COMMISSIONER AND SUPERINTENDENT, AMRITSAR DIVISION,—

submits the following proposals on the subject of requiring guardians to take out certificates of administration:—

"I would leave it optional to a guardian to take out a certificate; but at the same time I would make it legal for a person indebted to a minor's estate to refuse to pay the money demanded from him to any person who had not taken out a certificate.

"I would not only retain the present power (see Mr. Justice Melvill's Minute, page 3, second paragraph on the page) of a minor to sue or defend a suit through his next friend or guardian, in cases in which the next friend or guardian does not profess to claim the charge of the property; but I would extend this liberty to all cases, whether the next friend or guardian claims charge of the property or not, giving the opposite party, however, the right in cases in which the minor's next friend or guardian claims the charge of the property to require the latter to take out a certificate of administration in separate proceedings. The law might provide for the suit being stayed or postponed for a sufficient time to enable this step to be taken."

He continues:—

"In cases in which a man's position as guardian, whether by reason of a provision in a will or by near relationship, is clear, I do not think it is desirable otherwise than as above provided to force the guardian to take out a certificate. As pointed out in the papers under reference, the taking out of a certificate is apt to foster undesir-

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able litigation, and in the great majority of cases the necessity for taking out a certificate would not arise unless the necessity were artificially created by legislation."

29. MUHAMMAD LATIF, EXTRA ASSISTANT COMMISSIONER OF JHANG,—

thinks the clause in question might safely be repealed, because it has been practically superseded by the beneficial rules enacted in Chapter XXXI of the Civil Procedure Code. If this is done, he suggests the insertion in the Code of a clause empowering the Court to accept as next friend or guardian *ad litem* any administrator certificated under the Minors' Act (apparently, in preference to any other person.)

30. UMAR BAKHSH, PLEADER, OF MULTAN,—

thinks the clause in question should be repealed, and that the Civil Procedure Code should be amended so as to provide that where a guardian has been appointed by a Civil Court (? certificated) he shall, in preference to others, be appointed next friend or guardian *ad litem*.

31. COLONEL E. P. GURDON, COMMISSIONER AND SUPERINTENDENT, MULTAN DIVISION,—

thinks the clause should be repealed, both in view of the provisions of Chapter XXXI of the Civil Procedure Code, and having regard to the fact that the proviso admits of wide and varied departures from the strict rule which the clause enacts. If the clause is repealed, he suggests that a clause should be inserted in the Civil Procedure Code legalizing the acceptance by the Civil Court of a certificated administrator as next friend or guardian *ad litem* wherever there is one.

32. MR. H. T. RIVAZ, GOVERNMENT ADVOCATE, PUNJAB,—

thinks the clause should be repealed and Chapter XXXI of the Civil Procedure Code amended so as to deal exhaustively with its subject-matter. He continues:—"I think it might be made clear that, where there is a guardian holding a certificate, the Court should accept such guardian as the person *prima facie* entitled to represent the minor plaintiff or defendant, and that the claims of such guardian should only be postponed on proof of incapacity or unfitness. The chapter might then go on to lay down the procedure which is to govern cases where no certificated guardian has been appointed, with regard to which full provision is already made in Chapter XXXI as it at present stands, though I think it might be made more clear as to what is the exact effect of any omission by the Court to carry out the provisions of the chapter in their integrity. Several cases have occurred lately in this province in which a minor plaintiff or defendant has been represented throughout in the Lower Courts by an apparently competent representative, but where such representative appears to have been accepted by the Court without any enquiry or any formal proceeding under Chapter XXXI of the Code. In many of these cases the Chief Court, when the facts have been brought to its notice, has felt bound to cancel the whole of the proceedings and order a re-trial after proper steps have been taken by the Lower Court under Chapter XXXI; thus in some cases rendering void *ab initio* proceedings which have really been conducted throughout with due regard

to the minor's interests, and in which the defects in the appointment of his representative are merely formal. I think, therefore, Chapter XXXI might attempt to point out what defects in the procedure prescribed must be considered fatal to the validity of the proceedings, and what may be considered mere irregularities not necessarily rendering the proceedings void, if no substantial injury to the interest of the minor can be shown to have resulted."

33. THE LIEUTENANT-GOVERNOR OF THE PUNJAB—

thinks it doubtful whether any amendment of the Civil Procedure Code is really required on the score of its conflict with Act XL of 1858, section 3, clause 2; and says that, so far as the Punjab is concerned, no practical difficulty seems likely to arise from the maintenance of both provisions of the law.

34. SARDAR GURDIAL SINGH, EXTRA ASSISTANT COMMISSIONER,—

thinks the clause should be removed, and a provision inserted in its place to the effect that where a guardian has been appointed under the Minors' Act no one else shall be allowed to act for the minor.

35. MR. R. J. CROSTHWAITE, JUDICIAL COMMISSIONER, CENTRAL PROVINCES,—

argues that clause 2 of section 3 of Act XL of 1858 and Chapter XXXI of the Civil Procedure Code are not in conflict, inasmuch as the Courts, being allowed a discretion under the latter enactment, would exercise it so as to secure the appointment of a certificated administrator, who has a legal right to represent the minor, where there is one and he is willing to act.

Where, however, the certificated administrator is not willing to act, the proviso to section 3 of Act XL of 1858 lets in another person, and the omission from the corresponding clause of Act XX of 1864 of the words "or for any other sufficient reason" is therefore undoubtedly an error.

He thinks clause 2 of section 3 of Act XL of 1858 might be repealed as proposed by the Government of India; but he would prefer to let it stand and to bring the corresponding clause of Act XX of 1864 into complete accord with it. If the clause is repealed, he says, suits might be brought by next friends merely for the purpose of substantiating a claim to the charge of a minor's estate.

Referring to Mr. Justice Melvill's proposal (*supra*, paragraph 4), he considers it should not be adopted, because it would greatly increase litigation and would put difficulties in the way of realising petty sums due by minors.

36. MR. BEHARI LAL BASU, PLEADER, OF HOSHANGABAD,—

writes:—

"In the Bombay Act it is incumbent on the creditor to take out a certificate before he can proceed against a minor, the claim exceeding Rs. 250; thus it entails great hardship on the creditor, who is bound to take some preliminary steps for the assertion of his claim, thereby incurring trouble and expense.

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"But this section in the Minors' Act does not seem called for, as it is a matter of procedure, and any change which is conducive to the welfare of the minor can be introduced in the Procedure Code. 'Any guardian who has obtained a certificate under the Minors' Act should not be required to appear as next friend in civil cases. Chapter XXXI of the Civil Procedure Code should not be made applicable to a certificated guardian.'"

37. MR. J. W. CHISHOLM, OFFICIATING COMMISSIONER, NARBADA DIVISION,—

observes that the tendency of Mr. Justice Melvill's proposals mentioned in paragraphs 3 and 6 of the Resolution (Points I, III, and IV) is to make applications to the Courts for certificates of administration as numerous as possible. He is opposed to this policy for the following reasons:—

Certificates are at present rarely applied for, and to make them compulsory would be undesirable and would certainly be distasteful to the people. Nor would such a provision do much to protect the interests of minors, because these are as a rule well looked after by the immediate relations or natural guardians, and where loss occurs it results (in the Central Provinces) not from wrongful assumption of guardianship but from abuse of powers by rightful guardians, and it is not possible to follow up the grant of a certificate by controlling the proceedings of the guardian. The proceedings antecedent to the grant of a certificate would, moreover, cause much inconvenience and expense, which would not be compensated by any benefit to the estate of the minor; and another consequence of introducing such a procedure would be that, to avoid trouble, near relations of minors would continue to act without certificates, with the result that many of the transactions entered into by them would, if challenged, be declared void, and this would lead to much dishonest litigation.

For these reasons, Mr. Chisholm would prefer that the application for a certificate should continue to be optional, as provided in section 2 (? section 3) of Act XL of 1858. He would omit the latter clauses of that section as being separately provided for in Chapter XXXI of the Civil Procedure Code, and would clearly provide in that chapter for certificated guardians being allowed to appear in all cases in the Civil Courts on account of the minors whom they represent.

38. LIEUTENANT-COLONEL C. H. GRACE, DEPUTY COMMISSIONER, JABALPUR,—

approves of the Government of India's proposal, but suggests that the Court, in appointing a guardian [*ad litem*] in "doubtful cases," should see that he is fit for the trust, that he has no interest adverse to that of the minor, and that he is a relation or kinsman of the minor.

39. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

considers Mr. Justice Melvill's proposal that every person who requires the assistance of the Court should be compelled to take out a certificate of administration is both unnecessary and impolitic. The experience of the Central Provinces is that it is not the usurpation of the office of guardian, but the abuse of its powers, that is the source of litigation; and the Chief Commissioner believes that the proposed provision would lead to inconvenience and increased litigation.

Referring to Mr. Crosthwaite's remarks [*supra*, paragraph 35] as to the supposed conflict between the provisions of the Minors' Act and those of Chapter XXXI of the Civil Procedure Code, the Chief Commissioner suggests that it would be well to get rid of any uncertainty on the subject by making it clear that, if the Court allows it, a person otherwise qualified to act may sue on behalf of a minor, even though he has not obtained a certificate.

40. THE RECORDER OF RANGOON—

discusses the relative bearing of section 3, clause 2, of Act XL of 1858, and Chapter XXXI of the Civil Procedure Code, and arrives at the following conclusions:—

"It would seem therefore that, so far as the institution and defence of suits is concerned, if any person obtains a certificate of administration under Act XL of 1858, such person, and such person only, could institute or defend a suit connected with the estate; creditors could deal with him and he could deal with debtors. No alteration of the law has been made in such a case by the passing of Chapter XXXI, except to make the guardian sue as next friend and to make him in some instances liable for the costs of a suit.

"But in cases where no person obtains a certificate under Act XL of 1858, or gets leave to sue without a certificate under its provisions, in such cases the passing of Chapter XXXI has made a great difference, for it enables any person who does not claim the charge of the minor's estate without applying for a certificate of administration to institute suits on his behalf as next friend, and any person to institute suits against his estate by getting a guardian for the suit appointed, and no person need claim the charge of the minor's estate unless he pleases.

"It seems to me to come to this, that the passing of Chapter XXXI of the Code of Civil Procedure enabled the estate of a minor to be got in and distributed without any certificate of administration being applied for under Act XL of 1858, unless on the application of some person interested in the minor that Act was put into force, in which case, if the application was granted, the estate would be administered under the provisions of the old Act, whereas before the Chapter XXXI became law the estate of a minor could not be got in or distributed without putting the provisions of Act XL of 1858 in force if any question had to be litigated.

"The Government of India appears to think that the effect of passing Chapter XXXI of the Code has been to make it applicable to a certain extent to persons who have obtained certificates under Act XL of 1858, and no doubt to a very limited extent it is, as under it the next friend, who would be the certificate-holder, may be ordered to pay costs personally; but I cannot see, as would seem to be implied by the 9th paragraph of the Resolution of the Government of India, that Chapter XXXI would so far apply to a certificate-holder as to render it necessary for him to be appointed a guardian *ad litem* under it: it seems to me that he has the position of guardian *ad litem* without it."

He does not approve of Mr. Justice Melvill's proposal (see paragraph 4, *supra*), regarding which he writes as follows:—

"It seems to me that it would not be for the